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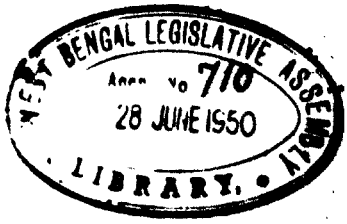

Council Proceedings

Official Report

Bengal Legislative Council

Thirtieth Session, 1928

13th to 18th, 20th to 25th, 27th, 28th, 30th, 31st August, 1st, 3rd & 4th September, 1928

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GOVERNOR OF BENGAL.

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GOVERNMENT OF BENGAL.

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DEPUTY PRESIDENT.

Khan Bahadur Maulvi EMADUDDIN AHMED, B.L.

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2. Dr. Sir DEVA PROSAD SARBADHIKARI, kt., C.I.E., C.B.E.
3. Mr. G. MORGAN, C.I.E.
4. Mr. M. ASHRAF ALI KHAN CHAUDHURI.

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Registrar to the Council—J. W. McKAY.

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ALPHABETICAL LIST OF MEMBERS.

A

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Ahamad, Maulvi Asimuddin. [Tippera South (Muhammadan).]
Ahamad, Maulvi Kasiruddin. [Rangpur West (Muhammadan).]
*Ahmed, Khan Bahadur Maulvi Emaduddin. [Rajshahi South (Muhammadan).]
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Ali, Mr. Altaf. [Bogra (Muhammadan).]
Atiqullah, Mr. Syed Muhammad. [Mymensingh East (Muhammadan).]

B

Bagchi, Babu Romes Chandra. [Malda (Non-Muhammadan).]
Baksh, Maulvi Kader, B.L. [Dinajpur (Muhammadan).]
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Banerjee, Babu Promotha Nath. [Midnapore South (Non-Muhammadan).]
Banerjee, Mr. A. C. [Calcutta South Central (Non-Muhammadan).]
Bannerjee, Babu Jitendralal. [Birbhum (Non-Muhammadan).]
Basu, Babu Sasi Sekhar. [24-Parganas Rural South (Non-Muhammadan).]
Basu, Mr. P. C. [Burdwan South (Non-Muhammadan).]
Basu, Mr. Sarat C. [Burdwan North (Non-Muhammadan).]
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Bose, Mr. S. C. (Calcutta University.)
Bose, Mr. Subhas Chandra. [Calcutta North (Non-Muhammadan).]
Burge, Mr. B. E. J. (Nominated official.)

C

Cassells, Mr. A. (Nominated Official.)
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* Deputy President, Bengal Legislative Council.

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Chatterjee, Srijut Bijay Kumar. [Bankura West (Non-Muhammadan).]
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Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman. (Nominated Non-official.)
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Choudhury, Maulvi Khorshed Alam. [Bakarganj North (Muhammadan).]
Cohen, Mr. D. J. (Nominated Non-official.)

D

Das Gupta, Dr. J. M. [Calcutta Central (Non-Muhammadan).]
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Datta, Babu Amulya Chandra. [Hooghly Muncipal (Non-Muhammadan).]
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Dutt, Babu Saral Kumar. [Bakarganj North (Non-Muhammadan).]

E

Eddis, Mr. A. McD. (Bengal Chamber of Commerce.)

F

Faroqui, Khan Bahadur K. G. M. [Tippera North (Muhammadan).]
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G

Ganguly, Babu Khagendra Nath. [Howrah Municipal (Non-Muhammadan).]
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Gordon, Mr. A. D. (Indian Tea Association.)
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Gupta, Rai Bahadur Mahendra Nath. (Expert, Nominated.)

H

Habibulla, Nawab Khwaja. [Dacca City (Muhammadan).]
Haque, Khan Bahadur Maulvi Asirul. [Nadia (Muhammadan).]
Himatsingska, Babu Prabhu Doyal. [Calcutta West (Non-Muhammadan).]
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Huq, Khan Bahadur Maulvi Ekramul. [Murshidabad (Muhammadan).]
Huq, Mr. A. K. Fazl-ul. [Dacca East Rural (Muhammadan)]

I

Ismail, Khan Bahadur Maulvi Muhammad. [Mymensingh Central (Muhammadan).]

J

James, Mr. F. E. O.B.E. [Presidency and Burdwan (European).]
Jenkins, Dr. W. A. [Expert, Nominated.]

K

Karim, Maulvi Abdul. [Burdwan Division South (Muhammadan).]
Kasem, Maulvi Abul. [Burdwan Division North (Muhammadan).]

Khan, Babu Debendra Lal. Midnapore North (Non-Muhammadan).]
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Khan, Khan Sahib Maulvi Muazzam Ali. [Pabna (Muhammadan).]
Khan, Maulvi Tamizuddin. [Faridpur North (Muhammadan).]
Khan, Mr. Razaur Rahman. [Dacca East Rural (Muhammadan).]

L

Lala, Babu Saroda Kripa. (Chittagong Landholders.)
Luke, Mr. N. R. (Indian Jute Mills Association.)

M

Macartney, Mr. J. G. [Dacca and Chittagong (European).]
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Maiti, Babu Mahendra Nath. [Midnapore South-East (Non-Muhammadan).]
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Mumin, Khan Bahadur Muhammad Abdul. (Nominated Official.)

N

Nandy, Maharaj Kumar Sris Chandra. [Murshidabad (Non-Muhammadan).]
Nasker, Babu Hem Chandra. [24-Parganas Rural Central (Non-Muhammadan).]
Nazimuddin, Mr. Khwaja, C.I.E. [Bakarganj South (Muhammadan).]
Nelson, Mr. W. H. (Nominated Official.)

P

Pal Choudhuri, Mr. Ranjit. [Nadia (Non-Muhammadan).]
Parrott, Mr. Percy. (Bengal Chamber of Commerce.)
Poddar, Mr. Ananda Mohan. (Bengal Mahajan Sabha.)
Prentice, the Hon'ble Mr. W. D. R., C.I.E. (Member, Executive Council.)

R

Rahim, Sir Abd-ur, K.C.S.I. [Calcutta North, Muhammadan).]
Rahman, Maulvi Azizur. [Mymensingh North-West (Muhammadan.)]
Rahman, Maulvi Shamsur-. [Khulna (Muhammadan).]
Rahman, Mr. A. F. (Nominated Non-official.)
Rahman, Mr. A. F. M. Abdur. [24-Parganas Rural (Muhammadan).]
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Ray, Babu Nagendra Narayan. [Rangpur West (Non-Muhammadan).]
Ray, Babu Surendra Nath. [24-Parganas Municipal South (Non-Muhammadan).]
Ray, Dr. Kumud Sankar. [Faridpur North (Non-Muhammadan).]
Ray, Maharaja Jogindra Nath, of Nator. (Rajshahi Landholders.)
Ray, Srijut Radha Gobinda. [Bankura East (Non-Muhammadan).]
Ray Chaudhuri, Mr. K. C. (Nominated Non-official.)
*Ray Chaudhuri, the Hon'ble Raja Manmatha Nath, of Santosh. (Dacca Landholders.)
Reid, Mr. R. N. (Nominated Official.)
Roy, Babu Manmatha Nath. [Howrah Rural (Non-Muhammadan).]
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Roy, Mr. Bijoy Prasad Singh. (Nominated Non-official.)
Roy, Mr. D. N., Bar.-at-Law. [Jessore South (Non-Muhammadan).]
Roy, Mr. Kiran Sankar. [Dacca Rural (Non-Muhammadan).]
Roy Choudhuri, Rai Bahadur Satyendra Nath. [Bakarganj South (Non-Muhammadan).]

S

Sachse, Mr. F. A. (Nominated Official.)
Sanyal, Babu Sachindra Narayan. [Rajshahi (Non-Muhammadan).]
Sarbadhikari, Dr. Sir Deva Prosad, Kt., C.I.E., C.B.E. (Nominated Non-official.)
Sarkar, Babu Naliniranjan. [Mymensingh East (Non-Muhammadan).]

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* President of the Bengal Legislative Council.

Sarker, Rai Sahib Rebati Mohan. (Nominated Non-official.)
Sattar, Khan Sahib Abdus. [Chittagong South (Muhammadan).]
Sattar, Mr. Abdool Razak Hajee Abdool. [Hooghly *cum* Howrah Municipal (Muhammadan).]
Sen, Mr. Satish Chandra. (Bengal National Chamber of Commerce.)
Sen, Srijut Nagendra Nath. [Khulna (Non-Muhammadan).]
Sen Gupta, Mr. J. M. [Chittagong (Non-Muhammadan).]
Shah, Mr. Gholam Hossain. [24-Parganas Municipal (Muhammadan).]
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur. (Burdwan Landholders.)
Solaiman, Maulvi Muhammad. [Barrackpore Municipal (Muhammadan).]
Stapleton, Mr. H.E. (Nominated Official.)
Suhrawardy, Mr. H. S. [Calcutta South (Muhammadan).]

T

Thomas, Mr. H. W. (Calcutta Trades Association.)
Travers, Mr. W. L., C.I.E., O.B.E. [Rajshahi (European).]

W

Wordsworth, Mr. W. C. [Presidency and Burdwan (European).]

THE BENGAL LEGISLATIVE COUNCIL PROCEEDINGS.

(Official Report of the Thirtieth Session.)

VOLUME XXX—No. 2.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Town Hall, Calcutta, on Monday, the 13th August, 1928, at 3 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, Minister, and 115 nominated and elected members.

Oath or Affirmation.

The following members made an oath or affirmation of their allegiance to the Crown:—

Mr. B. E. J. BURGE.

Babu PRANENDRA NARAYAN CHAUDHURI.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

Procedure to be adopted in putting clauses of the Bill.

Mr. PRESIDENT: Gentlemen of the Council, in dealing with this Bill I propose to depart from the procedure which I have followed in regard to other Bills which have come before the Council for consideration. I do not propose to put the Bill, clause by clause, with motions in each case that "this clause stand part of the Bill." I propose to have the amendments discussed—those of them that are able

to be discussed in the absence of sanction of the Governor General—as far as possible in the order of the clauses to which they respectively relate. But I shall not put any motion that each individual clause stand part of the Bill. If this latter course were adopted by me discussion of any particular clause would be irrevocably concluded by the passing of such a motion, and the discussion of any further amendment to that section, whether a consequential amendment rendered necessary by the carriage of some subsequent amendment, or an amendment which it is not now possible to discuss in the absence of necessary sanction, would be impossible.

Accordingly my procedure will be to call those clauses to which amendments are proposed, to have the amendments discussed (where discussion is not prevented for the time being by absence of sanction) and so to dispose of all amendments to the clauses of the Bill. The clauses as amended will then be put collectively in one or more motions, as may be necessary. Thus will be concluded the consideration stage of the Bill.

Clause 2.

The following motion was called but not moved and therefore deemed to be withdrawn:—

Babu AMARENDRA NATH GHOSE to move that in clause 2 from proposed sub-section (*3*) sub-clause (*iii*) be omitted.

Rai HARENDRANATH CHAUDHURI: Do I understand that the amendment standing in the name of Babu Akhil Chandra Datta to clause 1 is one such amendment which requires previous sanction?

Mr. PRESIDENT: That will be taken up at the end.

Babu ROMES CHANDRA BAGCHI: I beg to move that in clause 2 in proposed sub-section (*3*) (*iii*) before the words "any area constituted a municipality" the words "All lands other than agricultural lands situated within" be inserted.

The object of my motion is to make it clear that the Bengal Tenancy Act should continue to apply to all agricultural areas in municipalities even when they happen to be excluded from the operation of the Act under this section. As it at present stands, the Tenancy Act applies to all agricultural lands. The words "any area constituted a municipality under the provisions of the Bengal Municipal Act of 1884 or part thereof and specified in a notification in this behalf by the local Government" were inserted by Act I (B.C.) of 1907 in Western Bengal and Act I (E.B.C.) of 1908 in Eastern Bengal. But

as yet no such notification has been issued. A[illegible] serve to themselves the power of withdrawing the [illegible] the Tenancy Act from any municipal areas, it is right and proper that there should be a clause protecting the rights of cultivating raiyats in municipal areas. The right of occupancy was created for the benefit of the cultivating raiyats and there is no reason why those in municipal areas should be deprived of their rights. Those who are aware of the nature of the municipal areas of mufassal know perfectly well that there are extensive agricultural areas in mufassal municipalities, and it would be rather cruel if by any notification the local Government make the raiyats of those areas in mufassal municipalities part with their valued rights. With these words I beg to move my amendment.

Babu BEJOY KRISHNA BOSE: I have also given notice of a motion similar to the one just now moved by Babu Romes Chandra Bagchi. Those who know our mufassal towns know very well that within the municipal areas there are large tracts which are really agricultural lands and are held by bonâ fide tenants. I see no reason why these bonâ fide tenants should be excluded from the benefits of the Bengal Tenancy Act. I know that under the provisions of the present Bill in clause 2 there are certain safeguards, namely, that notification has to be issued by the local Government and in the proviso it is said that no notification is to be issued unless the Bengal Legislative Council by a resolution recommends that a notification be issued. My point is that: even after the notification is issued lands which are really agricultural lands but lie within a municipal town should be governed by the Bengal Tenancy Act and not otherwise.

Khan Bahadur Maulvi EKRAMUL HUQ: I rise to support the amendment just now moved. It will not cause any harm if the Hon'ble Member in charge accepted the small amendment, inasmuch as he will be conceding the right which is already possessed by tenants whose holdings are transferred in municipal areas. Persons who hold lands in municipal areas may possess occupancy rights, but by a clear provision of the fact in this amending Bill Government will not be giving to the tenantry something more than what they actually possess.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (The Hon'ble Sir Provash Chunder Mitter): I am afraid this amendment is the result of a misapprehension. If the hon'ble members will turn to clause 3 of the present Act they will find this: "Any area constituted a municipality under the provisions of the

Bengal Municipal Act, 1884, or part thereof, if such area or part is specified in a notification made in this behalf by the local Government." No notification has been issued by the local Government. So the position at the present day is that the Bengal Tenancy Act applies to all the mufassal municipalities. Now if the Bengal Tenancy Act applies to all the mufassal municipalities the amendment, if accepted, will mean that the Bengal Tenancy Act will only apply to all agricultural lands. At present it does not apply either to agricultural or horticultural lands, and no doubt by its own force it cannot apply to lands other than agricultural or horticultural. Hon'ble members will also notice the provision in the proposed Bill, namely, any area constituting a municipality under the provisions of the Bengal Municipal Act of 1884, or part thereof, if such area or part is specified in a notification made in this behalf by the local Government. The proviso should be read with clause 3, which extends by its own operation to the whole of Bengal except—that is to say, the Bengal Tenancy Act will not apply to the mufassal municipalities unless there is a notification. Now let us examine the procedure of a notification as contained in the proviso at the end of this clause. The proviso is this: "Provided that no notification shall be issued under clause (*ii*) or clause (*iii*) of the sub-section unless—

(*a*) it is previously published in the area concerned or part thereof in the prescribed manner; and

(*b*) (this is very important) the Bengal Legislative Council by a resolution recommends that the notification be issued."

Therefore if any notification is proposed to be issued, first of all local opinion has to be consulted under clause (*a*). In the second place, unless the Bengal Legislative Council recommends a notification it cannot be published. But the real point is that this amendment is more or less superfluous, because the Bengal Municipal Act can only apply to agricultural lands. I trust the hon'ble movers of this amendment, after I have explained, will see that it is not perhaps necessary as it may give rise to difficulties of interpretation if this amendment forms part of the Act. I would also draw the attention of the House to section 19 (*2*) of the Act, which says: "The exclusion from the operation of this Act by a notification under sub-section (*3*) of section 1, of any area constituted a municipality under the provisions of the Bengal Municipal Act, 1884, or of any part of such area shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area." So that will make the position perfectly safe and I am sure those members who are in favour of the tenants will see that it is something which will be against the tenants who hold lands in municipal areas. I trust that the House will see that the amendment is not necessary and the mover will withdraw it.

The motion of Babu Romes Chandra Bagchi was then put and a division taken with the following results:—

AYES.

Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Promotha Nath.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Bose, Babu Bejoy Krishna.
Chakravarti, Babu Jogindra Chandra.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Rai Harendranath.
Dutta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Huq, Khan Bahadur Maulvi Ekramul.
Hussain, Khan Bahadur Maulvi Syed Maqbul.
Ismail, Khan Bahadur Maulvi Muhammad.
Karim, Maulvi Abdul.
Khan, Babu Debendra Lal.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Naskar, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahim, Sir Abd-ur-.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Dr. Bidhan Chandra.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Sarker, Babu Nalinirenjan.
Sarker, Rai Sahib Rebati Mohan.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sulaiman, Maulvi Muhammad.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Drummond, Mr. J. G.
Ghose, Mr. N. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Hopkyns, Mr. W. S.
Hussain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Lala, Babu Sarada Kripa.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Rrihat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Reid, Mr. R. N.
Roy, Mr. Bijay Prasad Singh.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 44 and the Noes 37 the following motion was carried:—

"That in clause 2 in proposed sub-section (3) (iii) before the words 'any area constituted a municipality' the words 'All lands other than agricultural lands situated within' be inserted."

The following motions were called but not moved:—

Maulvi SHAMSUR-RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 2, in the proposed sub-section (*3*) (*iii*), lines 3 to 5, the words "or part thereof, if such area or part is specified in a notification made in this behalf by the local Government" be omitted.

Mr. W. H. NELSON: I beg to move that in Bill clause 2 for the proposed sub-section (*3*) (*iv*) and (*v*) the following be substituted, namely:—

"(*iv*) the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874."

This is a drafting amendment. It only carries out the intention of the Bill. As a matter of fact the Act applies to the whole of the Jalpaiguri district but with certain restrictions. The object of the amendment is to retain the actual position as at present and not to make any change. The words which are in the Bill would change the position but not intentionally. The words which I propose to substitute in my amendment retains the present position.

The motion was put and agreed to.

Mr. W. H. NELSON: On a point of order. It is not posible for this House to legislate about the Chittagong Hill Tracts. I refer you, Sir, to the "Backward Tracts" notification. The next three amendments therefore are out of order.

Mr. PRESIDENT: Mr. Nelson is right. I am sorry that these amendments escaped our vigilance. They should have been disallowed.

The following amendments were then disallowed:—

Babu AMARENDRA NATH GHOSE to move that in clause 2, from the proposed sub-section (*3*) (*v*) proviso the words and letters "or clause (*iii*)" be omitted.

Srijut NAGENDRA NATH SEN to move that in clause 2 in the proviso, line 2 to proposed section 1 (*3*) (*v*), after the words and letters "or clause (*iii*)" the words "or clause (*iv*) or clause (*v*)" be inserted.

Maulvi SHAMSUR-RAHMAN to move that in clause 2, in the proposed proviso to sub-section (*3*) (*v*), line 2, after the words "or clause (*iii*)" the words "or clause (*iv*) or clause (*v*)" be inserted.

Clause 4.

Srijut NAGENDRA NATH SEN: I do not propose to move my amendment which runs thus: "That sub-clause (*a*) of clause 4 be omitted."

Maulvi TAMIZUDDIN KHAN: I gave notice of a similar amendment. May I now move as Srijut Nagendra Nath Sen does not like to do so.

Mr. PRESIDENT: Yes, you can move it.

Maulvi TAMIZUDDIN KHAN: I beg to move that sub-clause (*a*) of clause 4 be omitted.

The proviso runs thus—

"Provided that a person who under the system generally known as 'adhi,' 'barga' or 'bhag' cultivates the land of another person on condition of delivering a share of the produce to that person is not a tenant unless before the commencement of the Bengal Tenancy (Amendment) Act, 1928—

(*i*) he has been admitted in a document by the landlord to be a tenant, or

(*ii*) he has been held by a Civil Court to be a tenant."

This new proviso takes away whatever rights the bargadars have under the existing law. This seems to be surprising. We all know that previous to this there was another Bill which was circulated amongst the public and in that Bill various privileges were given to the adhiars or bargadars. That raised a good deal of controversy in the country, and almost the whole country was against those provisions which were considered to be very drastic. Now we see that the pendulum has swung to the other extreme. Instead of any extension of rights being given to the bargadars by the present amending Bill we see that the bargadars are going to be robbed of whatever rights they have under the present law. I do not know what was the necessity of introducing an amendment which will put this poor class of people to very great disadvantage and hardship. The bargadars are in fact the most helpless class of peasants in this country and it is therefore necessary that we should try our best not to rob them of their present rights but to see that their present rights are not taken away or that their rights may be enlarged to a certain extent. But instead of that we find that there is an attempt to take away their rights even as they exist under the present law.

3-30 p.m.

What the apprehension is, I do not know. Under the present law bargadars are not always tenants, but if there is a document in which he is admitted to be a tenant or there is any decision of a court of law, then he is one, or if there is a presumption in the record-of-rights in his favour, then he is also a tenant. In other circumstances he is not a tenant at all. I do not see why this new amendment should be introduced to put these people to difficulties. Even, under the present law, although occupancy rights are not transferable transfers are going on and the landlords are also recognising such transfers, either on receipt of a salami or otherwise according to the prevailing local custom. If the new amendment is passed what will be the effect? It will have this effect that in the case of transfer of occupancy holdings, the lands will gradually go into the hands of money-lenders and non-agricultural classes. There is nothing to prevent such a process under the present Bill. If the amending Bill be passed into law with this proviso intact the money-lenders who are not agriculturists will get hold of these lands which they will let out to bargadars. The bargadars will have no right whatever and will be mere labourers. I apprehend, therefore, that almost the whole class of agriculturists will be converted to the status of labourers under these money-lenders and non-agricultural holders of land. Under the present Act there is some safeguard against such apprehension. But if my amendment is not passed I apprehend that bargadars will have no right to fall back upon and gradually they will become mere serfs. I hope the House will seriously consider the situation and will think twice before they vote in favour of the new proviso proposed to be added to clause 4. There is some apprehension that if these bargadars are recognised at tenants, it will entail a great deal of hardship on a certain class of landlords who are not strong enough to protect themselves. I do not understand how that apprehension arises, because a bargadar can easily be brought to book if a suit is brought against him for the landlord's share of the produce of the land he cultivates. So, I think, there need be no apprehension on the part of any landlord that he will be put to difficulties on account of a bargadar being recognised as a tenant under certain restricted circumstances. I hope that the House will accept the amendment which I have proposed, viz., that the proviso be omitted.

Babu AKHIL CHANDRA DATTA: Sir, I am sorry that I am under the painful necessity of opposing this amendment. At the very outset I am very anxious to impress upon the House the fact that this is not a question between the zamindars on one side and the tenants or raiyats on the other. Zamindars as a class have nothing to do with this. I do not know if in the whole province there are more

than half a dozen zamindars who have got anything to do with bargadars. There is no manner of conflict on this point between the zamindars and the cultivators. The question is between the raiyats on one side and the bargadars on the other.

Now, Sir, the second point that I want to make out is that so far as the Government are concerned the position is this: as a result of the investigations of the Kerr Committee there was a preliminary draft made of the amendments proposed. Now, in the draft Bill, there was an express provision made that bargadars are to be treated as tenants—that was added to the definition of tenants. The result of that was that, as we all know, there was a hue and cry raised throughout the country, there was a vehement opposition from many persons and the result was that the Government had to publish a communique in which they said that they would abandon this amendment—and that was done without any reservation. The result was that in the Bill of 1926 there was no proviso as to the definition of a tenant. In the Select Committee we pressed that the position should be made absolutely clear as to whether a bargadar was or was not a tenant and a proviso was added saying that a bargadar is not a tenant—I am speaking without going into the niceties of the language. Then, as we all know, the Bill was dropped, amongst others, for this reason that the Bill did not raise the bargadars to the status of tenants. Now, in the present Bill, however, the Government have changed their attitude. The Government have accepted the proviso that was added by the Select Committee, and I congratulate the Government on their wisdom.

Then, on the merits of this question, I may point out that this arrangement of bargadars is the most equitable arrangement that one can conceive of between capital and labour. We have got, fortunately or unfortunately, in this country many landless people, i.e., people who have got no lands of their own and who have got no money to purchase them with. A man who has got some money purchases some raiyati land, so he invests his capital on the land. Another man, who has got no capital, but has labour. The capital and labour unite together and the result is a certain amount of crop and the arrangement is that half should go to the capital and half to the labour. May I ask if there is any other industry where you can find a fairer and a juster share given to the labour than what is given, viz., half to the capital and half to the labour. I say that it is a pre-eminently reasonable arrangement, because it blesseth him that gives; it blesseth him that takes; it is good for the owner of the land, because he cannot provide the labour himself and it is good for the man who cultivates the land, because he has got no land of his own. What will be the result if the present arrangement is disturbed?

The result will inevitably be that a bargadar will henceforth be recognised a tenant. Therefore, no owner of land will give any land on barga system. The result will be that the people who now work under the barga system will be deprived of their lands. Already we know that in this country ever since the publication of the report of the Kerr Committee what a commotion and a panic was caused and how many persons owning lands have taken back the lands to their khas possession. I know of a number of instances in which people have allowed their lands to remain uncultivated rather than to cultivate them by bargadars, because they apprehend that all their property will be lost to them. What will be the position? On the basis of the existing law a man makes some investment of his money in raiyati lands on the assurance that the law is there and that the bargadar is a mere labourer. Suddenly one fine morning he finds that a bargadar derives the right of tenancy, that is, he will have occupancy rights in ordinary course. The practical result is a confiscation of the property of the raiyats. We are all anxious to give some rights to the tillers of the soil, but at the same time you cannot be unjust to other people. You cannot rob other people of their property. You cannot rob Paul to pay Peter. Therefore, this seems to be quite a revolution. If you want a Bolshevic legislation, have it by all means. Let us improve the position of the actual tiller of the soil, even by sacrificing all other people. But if you want to have any regard for private property, you cannot rob people of their property, and certainly you cannot give the right of tenancy to a bargadar who has hitherto been looked upon as a mere labourer. It is all very well to say that we shall give some rights to the actual cultivators of the soil. There is not the least doubt about that. It is the cultivator who should be given his right of occupancy, there is no doubt about that, but the whole question is who is the cultivator. Can we say that a genuine cultivator is he and he alone who actually cultivates his own land—that is an absurdity. So, there must be a line of demarcation drawn. We know of several instances of real genuine bona fide cultivators who cannot cultivate their own lands. A widow, if she is the only member of a family, surely cannot cultivate the land herself. An old man cannot cultivate his own land. If some members of a family of bona fide cultivators are sent to jail the cultivation cannot be done by them. It is for this reason that the principle of cultivation by hired servants and hired labourers has been recognised. This was recognised in the Act of 1859, in the Act of 1869 and also in the Act of 1885. What is more—this has been recognised in the amending Bill now under discussion. Can you say that merely because a man who is really a cultivator, but cultivates with the help of labourers, is therefore to be not recognised as a bona fide cultivator?

3-45 p.m.

But can you say that merely because a man cultivates with the help of labourers he ceases to be a bona fide cultivator. Has it ever been suggested that because a cultivator cultivates with the aid of hired labourers, the right of occupancy should be given to those labourers?

Maulvi NURUL HUQ CHAUDHURI: On a point of order, Sir. Is the hon'ble member in order in discussing this question not from the point of view of the mover of the amendment that occupancy rights should be given to bargadars?

Mr. PRESIDENT: I did not find anything in the speech of the hon'ble member which I could rule out of order. (Hear, hear).

Babu AKHIL CHANDRA DATTA: Now, Sir, once you lay down that a bargadar is a tenant, it necessarily follows that in certain cases a man will become an occupancy raiyat the very moment he becomes a bargadar, and that in certain other cases he will become a non-occupancy raiyat. What I was going to submit is that you cannot push the doctrine of "actual cultivator" to any great length: a line of demarcation must be drawn somewhere. We must allow in some cases for cultivation by labourers and servants, but the whole question is whether a bargadar merely because he cultivates the land of a raiyat should be regarded as the real cultivator and that the raiyat whose land he cultivates is not a cultivator. The real question is whether the owner of the land is a bona fide cultivator or not, and not whether the bargadar is a bona fide cultivator. My friend, the mover of the amendment, has told us that we are going to rob the bargadar of his just rights. I am sorry to say that, so far as I know the real position, it is not a correct statement of facts. It is nowhere laid down, either in any Act or in any case law, that a bargadar is a tenant. All that has been said in various cases is that it is a question which should be decided on actual facts. It is a question of contract in each particular case—whether the bargadar should be treated as a mere labourer or as a tenant. My submission is that a bargadar is merely a labouring partner. In the definition of the word "raiyat" we are told—both in the the old Act and in this amending Bill—that a "raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by (hired servants) servants or labourers or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right. Who are these partners, pray? I say they are the labouring partners: there may possibly be other sorts of partners. But I say that the phrase "with the aid of partners" includes the case of labouring partners. It cannot possibly refer to undisclosed partners of the raiyat. In that case, it goes

without saying that the man is a raiyat. The present definition of "raiyat" makes it very clear that a bargadar is a mere labouring partner.

(Here the member, having reached the time limit, resumed his seat).

Sir ABD-UR-RAHIM: Sir, I support the amendment. There cannot be the least doubt that Babu Akhil Chandra Datta is finding himself in a very difficult position. If we look at the definition of the word "tenant," it is simply by artificial means that a bargadar or bhagdar is sought to be excluded from that definition. The definition runs thus: "Tenant means a person who holds land under another person and is, or, but for a special contract, would be, liable to pay rent for that land to that person." Then if you look at the definition of the word "rent" you will find that "rent means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant." Now, if the proposed proviso be deleted, can there be much doubt that a bargadar would be a tenant? The question then, is, what good grounds can there be for excluding him from the category of tenants? As admitted by Babu Akhil Chandra Datta, anyone who knows anything about tenancy law cannot deny that the principle underlying the whole Act is that the actual cultivator should have an interest in the land. Then because a man is called a bargadar or a bhagdar or by any other appellation of that sort, is he to be excluded from the category of tenants? Babu Akhil Chandra Datta says: "Look at the definition of a raiyat:" "the raiyat can cultivate the land through servants or hired labourers:" granted, but the raiyat is responsible for the cultivation of the land, he is to supply the implement, he is to supply the seeds, and the entire responsibility for profit or loss is his. That is the distinction. If that is so, what ground is there for saying that the bargadar, who cultivates the land and pays a part of the produce to the man from whom he has obtained the land, is not a tenant? Babu Akhil Chandra Datta has further said, "Oh! it is a mere exposition of the present law," but that is obviously not the fact. He has further said that unless a bargadar has been admitted in a document by the landlord to be a tenant, he cannot be considered as a tenant under the law as it at present stands. I say that if the facts show that he is a tenant, the Court is certainly entitled to find and should find that he is a tenant and act upon it. You are trying by arbitrary means to prevent a large class of people who actually cultivate the land and till the soil from acquiring any interest in the land. Babu Akhil Chandra Datta next says that there must be cases in which a raiyat ought to be allowed to cultivate land by hired labourer. Nobody disputes that. That is not the position now. The position is simply this: the

bargadar is a man who satisfies the description of a person who comes within the definition of tenant. Why then exclude him? Again, if he is a tenant, why should he not in due course acquire the rights of an occupancy raiyat? I do not know what the policy of my Swarajist friend is. For some reason or other—it must be in the interest of some class—you are excluding these people from the category of tenants. I strongly support the amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I oppose the amendment that has been moved by Maulvi Tamizuddin Khan. It has been said that this clause in the Bill is intended to take away the rights enjoyed by the bargadars so long. My friends have not explained what those rights are which this amending Bill seeks to take away from the bargadar. Well, this system of letting out lands to bargadars is a system which has been in existence in this country for a very very long time and everybody understands what that system implies. This provision has been introduced, so far as I can make out, for the purpose of safeguarding the interests of the raiyats. Reference has been made to the introduction of a section in 1921 by the committee which was appointed for the purpose of drafting a Bill for amending the Bengal Tenancy Act—a section which intended to confer certain rights of tenancy on bargadars on certain conditions. Reference has also been made to the fact that a large volume of public opinion concentrated in the country against the proposed arrangement, namely, that rights of tenancy should be conferred on bargadars; and we know that at that time the agitation became so intense and assumed such a magnitude that Government felt constrained to issue a communiqué that the Bill would not be proceeded with in order to pacify the people. Sir, the object which this Bill has in view, is merely to make clear the position as to whether a bargadar is really a tenant or not. The whole question is—is a bargadar a tenant under the law? Sir Abd-ur-Rahim has referred to the definition of rent and he says that rent has been defined as anything which is lawfully payable or deliverable in money or in kind by the tenant to his landlord. That is assuming the whole question that the bargadar is a tenant and the raiyat is a landlord. On the contrary the position in the country is this: A raiyat leases out his land to an under-raiyat who is called a chukanidar. He makes certain arrangements with some people for cultivating his land under the barga system. The man who takes the land knows that he is not a tenant, and the man who gives the land in adhi also knows that. This system has been going on since a very very long time, and there is absolutely no reason for saying that the bargadar's rights are being taken away. I would submit that the rights which really exist are being kept intact by the present Bill. The question whether the bargadar was a tenant was not free from difficulty, and it was always a matter of dispute. In order to set matters

right and for the benefit of the raiyats themselves, who form the backbone of the country, and who constitute 80 per cent. of the population, that this provision has been included in the Bill.

[4 p.m.]

When opinion was invited to the committee's Bill in the year 1921 a large volume of opinion was received by Government which was circulated to members and we find from that volume of opinion that opinion was also given by judicial officers both European and Indian of long standing, men of light and leading in the country, public associations, bar associations, jotedars' associations and so on, and a perusal of that volume of opinion will convince every one that the people condemned very much the proposal that was made at that time to secure rights of tenancy in favour of bargadars and it is for that purpose that this provision has been introduced in this Bill. Amidst a large collection of opinions on this point I will only refer to one specific opinion to show what the people, not only the people of the country, but others, judicial officers who had had to deal with questions of this kind in the course of their experience as judicial officers—what opinion they hold in regard to the real status of bargadars. I will quote only one portion of the report of Mr. Sankey, District Judge of Barisal, submitted in the year 1923:—

"I am of opinion that the bargadar is in the great majority of cases not a tenant and has never been considered as one. In many cases he is a labourer, pure and simple. He cultivates one piece of land for a year, and has no intention of staying there for the next. He is paid for the sake of convenience his wages in kind instead of in cash. Such an arrangement is convenient to the employer who does not have to part with hard cash, and to whom it ensures that the bargadar will get the best possible crops out of the land. It is in no way inconvenient to the bargadar. In many other cases the holder of the land has difficulty in cultivating the land himself. It may be that the holder is a woman or an absentee. Frequently he or she is of the poorer middle class. He makes an arrangement with some cultivator of the village, who has perhaps more ploughs and cattle than he requires for his own land. The cutlivator becomes partly a partner and partly a labourer and cultivates the land on condition that he should receive a share of the produce. The arrangement is a convenient and suitable one. I can see no justice or common sense in a proposal which will convert bargadars of this sort into tenants. Like all violent and unreasonable legislative changes, this proposal is bound to defeat its own ends. Bargadars of the sort that will be converted into tenants by the new Act will disappear. Such land will be cultivated by labourers for monthly wages in cash."

This is not the only single opinion on this point but there are several similar ones which were received at that time. The arrangement is very simple and perfectly intelligible. The arrangement merely is this that a tenant who does not cultivate his land gives it to another man to cultivate it for him on condition that he will be paid in kind and not in cash and on the understanding that he will have a share of the produce of his land which means that he will have an interest in the profit of his labours. It is a perfectly good arrangement. It is said that the Bengal raiyat is an improvident man and does not know his own interest. But Sir, the arrangement that he enters into with the bargadar is a very convenient one as it enables him to get crops although he does not till the soil but only supervises the cultivation. He gives the bargadar an interest in his land in the hope that the bargadar will realise that when the produce is harvested, he will get more share of the produce of the land. I submit Sir, this is a perfectly good arrangement and there is no reason of apprehension that this Bill is seeking to take away the rights of the bargadars.

Khan Bahadur Maulvi AZIZUL HAQUE: I am afraid I have not been able to see the point of view from which this simple amendment is opposed by my friends Babus Akhil Chandra Datta and Jogindra Chandra Chakravarti. The position, if the amendment of my friend Maulvi Tamizuddin Khan is carried, will be that the present law as it stands will be maintained. I want to put one question to my friends who oppose the amendment. Do you desire that the present rights should be respected or do you fear that anything is going to be done by which these rights are likely to be jeopardised? There seems to be a little confusion in the point of view which looks at the discussion on this question from an angle in which it is sought to be made out that no bargadars has any right, and the bargadars should not be given any right. The question is nothing of that sort. The definition of a tenant is Sir, that a tenant means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person." This arrangement has stood ever since 1885, up to the year 1928, and we have found no need of change so far as the operation of this clause is concerned. To-day, Sir, we have been told of a new phase in the economic history of this country, namely, that the cultivator of the soil is not the actual owner of the soil. Some distinction has been sought to be made out between the man who actually cultivates and the man who is supposed to be a cultivator. I have not yet been able to understand, Sir, why the man who really tills the soil should not have the maximum right that is possible under the present law. My friend Babu Akhil Chandra Datta has said that they know nothing about case law. Another gentleman has referred to custom and thinks that

the bargadars should not have any right. I would like to point out, Sir, we are here to scrap up all case laws. The position after deletion will be that it will leave things as they are. It will be at the mercy of custom. If it has done so since the year 1885 it may be left there even new. I shall be quite content to scrap up the custom but I will ask my friends to say what will be the effect of this scrapping up of this custom. In the present law certain people have rights of tenancy and they have been given those rights in the record-of-rights. You will be pleased to see, Sir, that this amendment refers only to the person who under the present system is given the status of tenancy even though bargadar. If a man cultivates the land of another person he is called a bargadar and it is said that this man has no right of a tenant unless he has been admitted as such in a document before the commencement of the Bengal Tenancy (Amendment) Act, 1928. I have not been able, Sir, to understand the rationale of this way of thinking that the people who were bargadars before the commencement of this amendment Act should not have any right unless they have been admitted to be such in a document by the landlord.

The Hon'ble Sir PROVASH CHUNDER MITTER: May I, Sir, with your permission, rise and give the member some information? So far as these words are concerned, I am afraid they have crept in by mistake and we are quite willing to accept the amendment that sub-clause (*a*) of clause 4, be omitted. It relates to the words "before the commencement of the Bengal Tenancy Act, 1928". As it has a relevancy to the amendment now before the House, I give that information at this stage.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, much of this discussion would have been avoided if the Hon'ble Member had given this information a little earlier. There has been a great deal of confusion not only in the past but will be also in the future if the contractual rights entered into in the past between the tenant and the landlord are not to be respected. But Sir, in view of the fact that the Hon'ble Revenue Member has withdrawn the words "unless before the commencement of the Bengal Tenancy (Amendment) Act, 1928,".....

Rai HARENDRANATH CHAUDHURI: May I rise to a point of order, Sir? Can the Hon'ble Member in charge withdraw that clause now when it is not under discussion?

Mr. PRESIDENT: It cannot be withdrawn at this stage but it may be withdrawn or modified with the leave of the House when it is actually reached.

Khan Bahadur Maulvi AZIZUL HAQUE: I did not know, Sir, that this proposal of withdrawal would create so much consternation on the Swarajist side in this House. I find, Sir, that the present law grants no tenancy right to the bargadar. I agree, but if my friend Tamizuddin's amendment is carried it will save those who have already got the right and recorded as such and the law will remain as it stands at present. I think, Sir, it is very much better to improve and clarify our ideas. In view of the Revenue Member's attitude in agreeing to withdraw this clause I have nothing further to add, but I maintain, Sir, that the law should remain as it is and things be left as they are now.

Babu JITENDRALAL BANNERJEE: Mr. President, I quite agree with Khan Bahadur Azizul Haque in his statement of the law as also in his general view of the existing state of things: and it is because I agree with him that I oppose the amendment of Maulvi Tamizuddin Khan. His amendment is nothing quite so revolutionary as Mr. Akhil Chandra Datta would want to make it out. The Khan Bahadur has pointed out that the amendment will leave things as they are; and it is precisely here that I join issue with him. He wants to leave things as they are, but Sir, what is the present position? As the law stands, the bargadar does not possess the rights of a tenant; but there is nothing to prevent him from acquiring that status. Apparently, this right seem to be in favour of the bargadar. But the whole thing depends upon custom—and we all know what a fluid, non-certain and nebulous thing custom is. You cannot leave things indefinitely in this nebulous, fluid and uncertain condition! You cannot leave the bargadars at the mercy of custom; in which case the consequence will be that it will make room for litigation. What is needed, therefore, is more fixity and clarity of the law. Sir, the amendment of Maulvi Tamizuddin Khan is a lawyer's amendment, and therefore, I oppose it. We want that the law on the subject should be made clear and definite. Let us accept the plain fact that at present we cannot recognise the bargadar as a tenant. And if we cannot do so openly, what is the use of trying to do so by a camouflage—by leaving things uncertain and indefinite? I have every sympathy with the point of view of Sir Abd-ur-Rahim; and it is possible, upon a wide view of things, to urge that the bargadars should be given the rights of a tenant. But "should" does not always coincide with "what is." We are not ligislating in *vacuo*: we are legislating upon a background of past history and custom: and we cannot leave public opinion out of account. Under the existing state of things the bargadars and adhiars are not recognised as tenants, and the legislature and the Government cannot give them the rights of tenants without flouting public opinion.

Therefore I support the Bill as it stands and oppose the amendment of Maulvi Tamizuddin Khan.

Sir, much has been said about the cultivators of the soil and whether any right should be granted to them or not. But I do not understand why some of my friends should put an unduly narrow construction on what is meant by the expression "cultivator of the soil." Is only the cultivator of the soil the man who tills the soil with his own hands? Has the bhadralok agriculturist who invests money in land no place in the economy of things? And should not his rights be recognised as much as the right of the man who actually tills the soil?

Maulvi NURUL HUQ CHAUDHURI: Sir, the present controvercy as regards the status of bargadars. On the one hand there is the opinion that the bargadars should be recognised as tenants while on the other hand there is an equally large volume of opinion against it, but I cannot agree with my friend Babu Akhil Chandra Datta nor with my friend Babu J. L. Bannerjee in the interpretation of the law that under the present law the bargadars are nothing more than labourers. I am quite sure, Sir, that as soon as Babu Akhil Chandra Datta leaves this chamber and goes outside he will immediately forget the interpretation that he placed on it in this Council, Sir, under the present law a bargadar may be a tenant or a labourer, according to the intention of the owner of the land.

4-15 p.m.

There are decisions of the High Court to say that the bargadar is a labourer. There is other decisions which say that a bargadar is a tenant. In each case it is a question of intention. Personally I think that a bargadar is nothing but a labourer. My friend, Maulvi Tamizuddin Khan proposes that the law should be left exactly as it is. Clause 4 does not improve the law; all that is required is that we ought to leave it to the Courts of law to interpret whether a particular bargadar should be recorded as a labourer or a tenant, having regard to the intention of the parties. I think that the law should be left exactly what it is. I do not want any further complication. Neither the position of the bargadar nor that of the raiyat is in any way improved by this clause. If we want to discourage litigation, I appeal to you to leave this section on the statute as it is. I agree with my friend, Khan Bahadur Asizul Haque that unless the clause is so amended as suggested by him, the law should be left as it is. Nothing is easier than to look to the intention of the parties. I would ask, therefore, that having regard to the attitude of all sections of this House that the law regarding bargadar should be left as it is. This clause should be deleted altogether.

Mr. F. A. SACHSE: Sir, this amendment proposes to leave the Tenancy Act in its present ambiguous state as regards the status of bargadars.

In order to explain the attitude of Government why they cannot leave the law in its present state, I am afraid I must ask your permission to go into the history of the question in some detail.

The system of payment of rent in kind dates from the golden age of Bengal when in villages far from towns there was no such thing as money. Probably all the original khod-khast raiyats of Bengal paid their rent in produce. Produce was the original *kheraj* payable to the Sovereign. It was Todar Mall who introduced commutation on a large scale. In all Arabian countries from Babylon to Persia rent was universally paid on the Mukasimeh system. This was in all essentials the same as the barga system.

When the Act of 1885 was under discussion, none of the landlords, not even Babu Peari Mohan Mukherjee, suggested that the *bhaoli* and batai cultivators of Bihar and Orissa were not tenants. They were talked off indifferently as raiyats or tenants. At that time there were probably few people cultivating on this system in Eastern Bengal and Northern Bengal. When bargadars are mentioned, they also are spoken of as raiyats or tenants. When the Act was eventually framed and passed, it made no distinction between rent in cash and rent in kind, or between those tenants who paid a fixed amount of produce and those who paid a share of the produce whatever it was in any year.

We have already had a reference to the definition of rent. We were told that it was begging the question to say that in the case of bargadars anything was lawfully payable or deliverable in money or kind and that the landlord's share of the produce was rent. But, Sir, it is also begging the question to say that it is not rent, especially in view of the phrase "on account of the use or occupation of the land"; the bargadar has at least the use of the land for the time being. Section 40 says that "where an occupancy raiyat pays rent in kind or on the estimated value of a portion of the crop or at rates varying with the crop, etc."; section 69 says that "where rent is taken by appraisement or division of the produce, if either the landlord or the tenant neglects to attend either personally or by agent, etc."; therefore it is clear that a bargadar who pays a share of the produce can be a tenant under the Act.

On the opening day of this session, you, Sir, referred to the famous Judge, Mr. Ameer Ali. In his book on the Tenancy Act, there is no suggestion that bargadars are not tenants. The late Rai Bahadur Surendra Nath Sen was no friend of the bargadars. He wanted them all to be tenants at will or labourers, but in his book he quotes far more rulings of the High Court in which bargadars are treated as tenants

than rulings to the contrary effect. Among these judgments is a case decided by Sir Naliniranjan Chatarji and Mr. Duval in which the question at issue was whether a bargadar who had stipulated to pay a sum of money in lieu of half the produce was entitled to pay that money at his option instead of the produce. So I say there is abundant authority for holding that some bargadars at least are tenants. Therefore, if this amendment is accepted and if the exceptions are taken away, it would mean the confiscation of the existing barga rights.

Then Sir John Kerr's Committee began its sittings. For the first time most of its members heard the theory seriously argued that all bargadars were labourers because they did not pay rent. By a majority they decided that those bargadars who provided their own seeds and cattle should be tenants and those who did not should be servants or labourers. This solution of the problem was admittedly imperfect; it left untouched the apparent unfairness of the present law which gives a bargadar under a zamindar or tenure-holder the status of an occupancy raiyat and the right of commutation, whereas a cultivator on exactly similar terms under a raiyat is a tenant at will. No bargadar under-raiyats can have under the existing law a right of occupancy. Also the criterion accepted was arbitrary; there might be some bargadars who get seeds from their landlord more like permanent tenants than others who get nothing. Nevertheless it was the best that the committee could do, and it was agreed to by all the zamindars in the end, though opposed by most of the representatives of the tenants.

As Babu Jogindra Chandra Chakravarti has told us, this decision of Sir John Kerr's Committee caused widespread consternation in the country, and it was alleged that many bargadars were being turned out of the land they had been cultivating for years in the fear that the new Act would deprive the landlord of any chance of getting khas possession of such lands in future. Government, therefore, issued a communiqué in May 1923 saying that they would not accept the particular amendment which was proposed by Sir John Kerr's Committee; they however added that they reserved the right to prevent the extension of the system in future.

I need not say more about the communiqué, but I would point out that it did not and could not change the law. Only the Legislative Council can do that. If therefore bargadars could be tenants before the communiqué they may be so still.

Now we come to the Select Committee. They entirely reversed the decision of Sir John Kerr's Committee and said that all bargadars were labourers.

The 1927 Committee found this question much the most difficult of those they had to decide. Sir Naliniranjan held that if the issue had not been raised by Sir John Kerr's Committee, the best course might have been to leave the law as it was. In view, however, of the

strong feelings aroused he thought that the Bill must be framed so as to decide the matter one way or the other. He was of opinion that it was absolutely necessary for the bhadralok people of Bengal to be able to let their lands to bargadars and to be able to turn them out at any time, if they were lazy or incapable. It was pointed out that it had been decided to abolish commutation and hence by far the greatest objection to bargadars having rights as tenants had disappeared. It was also pointed out that the great majority of bargadars were under-raiyats: they were therefore tenants at will at present and tenants at will they would remain. In order to remove the grievance that bargadars under tenure-holders were raiyats, a suggestion was made for a special chapter for bargadars just as we have separate chapters for raiyats at fixed rates, occupancy raiyats, and under-raiyats. It would deal with all bargadars and declare that they were tenants at will, liable to ejectment at the end of the agricultural year on any one of the grounds applicable to under-raiyats of the lowest class, and also on this ground that he has failed to cultivate the land properly or has no means of continuing the cultivation.

This proposal surely left the bargadars sufficiently defenceless. I have been asked what did it matter whether the bargadars were called tenants at will or labourers. There is one advantage in calling them tenants at will. The Act dealing with the rights of landlords and tenants could regulate the maximum share of produce which all bargadars can be made to pay. There is a provision that the rent of bargadars who are tenants shall never exceed half the produce, and no body dare object that this is not sufficient if they pay all the expenses and take all the risk of cultivation. If this section could apply to all bargadars instead of only to those bargadars who are tenants, it would surely be an advantage.

Even this proposal was rejected by the 1927 Committee. They agreed unanimously that those bargadars who had been admitted by their immediate landlord in any document, whether a patta, a kabuliyat, or a plaint, in a rent suit, should be tenants; also those who had been so declared in a civil suit; a third exception in favour of those who had been recorded as raiyats or under-raiyats in a record-of-rights was rejected.

These then are the provisions of the present Bill. They are, I think, the very minimum which the Council must accept.

Coming now to the merits of the case, as Babu Akhil Chandra Datta so lucidly explained to us on the day the Bill was introduced, there are raiyats, the great majority I am glad to say, who still transplant paddy sitting in 2 or 3 feet of liquid mud and stand in water up to their waist to cut and steep the jute. There are others who have educated one or two of their sons, and these sons have got service as Deputy Magistrates or have become Chairmen of District Boards or

attained a high position at the Bar or on the Bench. If the rest of the family remain on the land, there may be something to be said for Akhil Babu's contention that these families are still bona fide cultivators. But if all the sons and the grandsons also have taken to other occupations, can these families still be called bona fide cultivators? Then there are the mahajan purchasers and the big zamindars like our friends the Maharaja of Mymensingh and Mr. Altaf Ali who are alleged to be so anxious to buy up raiyati holdings on a big scale.

4-30 p.m.

Is it to the interest of the province as a whole that the people who cultivate even that proportion of its lands which are habitually let to bargadars should for ever have no rights? It is not only against the acknowledged principles of the Tenancy Law in all countries but specially of India; it is against the promise of the Permanent Settlement: it is against the policy of our present Government as laid down in the communique which stated that they would reserve the right to take steps to guard against the extension of the system in future. And why is it against the interest of the agricultural population? A cultivator who pays a fixed amount of rent whether it be in cash or produce knows that once he has produced enough to pay that rent, all that remains over is his absolute property. If by energy and care, if by increased use of manure and better seeds, he can grow 2 maunds more, it is all his. If half of the excess only is his and the rest goes to the landlord, his inducement, his stimulus is reduced by half. It is said that by looking at a series of fields in the plains of Eastern Bengal an observer can tell at a glance which fields are cultivated by bargadars and which by ordinary raiyats. Then again Sir Naliniranjan has himself admitted that the bargadar differs less from the ordinary raiyat than from a real cooly. Will he come to thatch your houses, to carry your luggage to the station, to do earthwork on the District Board roads? Mr. Sankey's opinion which was read out to us is clearly inconsistent. In the same breath he said that the bargadars were labourers pure and simple and also people with more ploughs and cattle than they could employ on their own land. If we employ *malis* in our gardens we have to pay them whether they work or not, whether we get full supplies of vegetables and flowers or whether we get nothing at all. But we pay nothing to bargadars if they grow no crop. All the risk is theirs. For that reason they hardly answer to the usual interpretation of labourers.

I now call your attention to the meeting at the Albert Hall on Saturday where a resolution was passed protesting against pre-emption because it would give big landlords the right to take possession of raiyati holdings and to cultivate them by servants and coolies without any statutory interest in the land. "This," said the meeting, "is a contingency which must be avoided at any cost in the economic interests of the province."

Agriculture is the most important if not the only industry in nine out of ten districts of India. From the point of view of the economical welfare of this industry does it make any difference whether hired servants cultivate for big zamindars or bargadars for small tenure-holders and legal raiyats, if neither class of worker has any sort of stable interest in the land? The argument that there is no need to protect the bargadars because it is not to the interest of any landlord to turn out a good bargadar might have been applied equally well to the case of raiyats in 1859 and 1885. Why should any landlord want to turn out a good cash paying raiyat? There is, so far as I can see, one difference and one difference only and that is that the bargadar will be paying the economic rent, the highest rent the land can afford. Therefore no sensible landlord will turn him out. But laws cannot be framed on the assumption that every individual will be guided by sense. It is also said why interfere with a custom which leaves every body content. But are the bargadars content? In certain villages of Narail 6 annas of the lands are lying patit because the bargadars have refused to cultivate unless they are allowed to keep ⅔ of produce. Unless they have as much as 20 bighas (and few bargadars have so much land) they can hardly feed a family of five on their share of the produce after paying for the cost of cultivation. In agriculture as in every other industry Government must see that the workers earn a living wage or the trouble which Babu Jitendralal Bannerjee foreshadowed in his speech on 12th March will come.

Then there is the further point about contracts. It was understood by all of us in Sir Nalini's Committee that since the issue of the communique, if not before, all owners of raiyati interests were careful to give to their bargadars contracts which explicity declared them to be labourers. After visits to the registration offices at Narail, Magura and Khulna I find that this is not the case. Some of the most recent kabuliyats are for an indefinite term (bemeyadi) or for 9 years or for 3 years. There is no mention of rent but the landlord's share of the produce is called rajbhag: the document is called a barga jote kabuliyat and there is a stipulation that if produce is not delivered as stipulated, a big amount of money will be paid in lump or per bigha. The kabuliyats also are not stamped on the ground that they are leases of agricultural lands. Contracts for labour would require stamps.

Mr. PRESIDENT: Your time is up.

Mr. F. A. SACHSE: May I have just a few minutes to finish my speech regarding the attitude of Government?

Mr. PRESIDENT: Yes, you have my permission to do so.

Mr. F. A. SACHSE: The position therefore of Government is this: The Bill is a compromise evolved with great travail. There are provisions which do not please the big zamindars and provisions which do not please the tenure-holders and substantial raiyats. But there are provisions which it is hoped will help both classes and there are also provisions which get rid of discrepant High Court Rulings and others which give effect to the existing case law where case law has introduced improvements on the strict reading of the present Act. There are also clauses which, to a minor and insignificant extent it is true, help the poor cultivator who has not the fortune to be a raiyat. Government cannot give up any important provision of the Bill without betraying the obligations which it conceives itself to owe to the different classes unless, of course, at the clearly expressed invitation of a fair proportion of the representatives of all parties. Unless we stick to the present Bill, to all of whose provisions trusted representatives of each interest have at one or other time given their consent, the whole thing is in the melting pot and it will take years to prepare a new Bill. Much, therefore, as some members on this side of the House sympathise with the movers of this amendment, much as we admire their courage and disinterestedness in proposing this unpopular amendment, we request them to withdraw it and to concentrate their forces on defeating the amendments to the contrary effect which will make all bargadars labourers, even those who have admissions by their landlords in documents and judgments of the Civil Court in their favour.

[At 4-40 p.m. the Council was adjourned and it reassembled at 4-50 p.m.]

Maulvi SYED NAUSHER ALI: I have heard with great interest the arguments advanced against the amendment. It is not necessary for me to deal with each and everyone of them because some of them have already been dealt with by some hon'ble members on this side of the House. I wish only to say something in reply to the argument put forward by Babu J. L. Bannerjee. In the first place he stated that he was in sympathy with the bargadars and that he was in sympathy with the movers of this amendment. But he added that he would oppose this amendment because it was a lawyer's amendment. I do not know what he meant by it. I am sure he did not mean any reflection upon the lawyer members of this House.

Babu PROMOTHA NATH BANERJEE: He is himself a lawyer.

Maulvi SYED NAUSHER ALI: I am sorry I could not catch the exact words of my friend on the other side and I cannot reply. Of course the meaning of the expression is very simple but its significance

I have not been able to understand. But if he means any reflection upon the movers of this amendment I must tell this House that there ought not to be any reflection upon the movers.

Babu JITENDRALAL BANNERJEE: To clear any possible misapprehension, which I always avoid to create, I should say that the reflection made by me was certainly not intended for lawyers, but I meant that the amendment would leave the door open for litigation.

Maulvi SYED NAUSHER ALI: I accept that explanation and in fact I was going to say that he added it would keep the doors of litigation open. Of course litigation ought to be stopped but he said it was a lawyer's amendment.

Mr. PRESIDENT: You need not refer to that any more.

Maulvi SYED NAUSHER ALI: Then he stated that he wants to change the custom. That is very surprising. We are anxious to see that the law is clarified but not in a way so as to restrict the rights of bargadars. It has been stated by some hon'ble members of this House that it does not at all restrict the right of the bargadars but I will show that it does restrict the right of the bargadars. Now it has been stated by many an hon'ble member that a bargadar is not a tenant; that simply begs the question. It has been admitted by some hon'ble members that there are decisions to the effect that whether a bargadar is a tenant or not, whether he is a tenant or a pure and simple labourer, is a question of fact to be decided by the court on the facts of each case. We all know that in settlement records bargadars have been recorded as tenants. Now there is no provision in the amending Bill that these bargadars would be treated as tenants. Therefore it is clear that those bargadars who have been recorded as tenants would be excluded from the category of the tenants if this Bill is passed as it is. It cannot be said for a moment that this Bill as it stands will not restrict the right of bargadars. We would like to see that the law is clarified in a way so as not to restrict the rights of bargadars. If the Hon'ble Member in charge had been pleased to announce in respect of an amendment of mine that he would accept my amendment with regard to those bargadars who had been recorded as tenants in the settlement proceedings, that would be only just and reasonable. Otherwise what would happen? I submit that in legislating we should attempt to restrict litigation as much as possible. If the settlement records be not taken to be correct and the bargadars are not regarded as tenants what will be the fate of these tenants? The bargadars may go to court for having a declaration that they are tenants under the second clause. I will now read the second

clause. It runs thus: "Unless, before the commencement of the Bengal Tenancy (Amendment) Act, 1928, he has been held by a civil court to be a tenant." Now the Hon'ble Member in charge of the Bill has declared his intention that he would withdraw the words and figures "unless before the commencement of the Bengal Tenancy (Amendment) Act, 1928." The withdrawal of this will not in the least improve the position of the bargadars; for it will not be open to bargadars who has not already been held by a civil court to be a tenant to show that he is a tenant in spite of the fact that he has been recorded in the settlement records as a tenant. If along with the withdrawal the amendment of which I have given notice, namely, amendment No. 21 be accepted then only a bargadar who has not yet been held to be a tenant by a civil court will have a right to go to a civil court to seek its assistance to get him declared as a tenant.

Babu SURENDRA NATH BISWAS: Can the member speak on his amendment No. 21 while discussing the present amendment?

Mr. PRESIDENT: Maulvi Saheb you must confine yourself to the amendment before the House. Come to the point.

Maulvi SYED NAUSHER ALI: I was telling the House what the position will be if this provision be withdrawn. A bargadar to be a tenant will have either to be admitted in a document by the landlord to be a tenant or he will have to show that he had already been held to be a tenant by a civil court. So if my amendment be not accepted the withdrawal of the said clause will not improve the position of the bargadar, apart from the fact that complication will naturally arise of those who have already been recorded as tenants in the settlement records will have to go to court to have them declared as tenants. Therefore, conceding that it will be open to the bargadar to go to court for a declaration of his right of tenancy, it will certainly give rise to litigations and to avoid that litigation at least this clause ought to be omitted.

But if this Bill be passed into law as it stands I submit the bargadar in such cases in which he has been recorded as a tenant in the settlement record-of-rights, will lose his right. Therefore, my submission to the House is that the argument on the other side that it does not at all intend to take away the right of bargadars is groundless. With these remarks, I beg to support this amendment.

Babu AMARENDRA NATH GHOSE spoke in Bengali, the English translation of which is as follows:—

"Mr. President, Sir, I am glad to find an opportunity to oppose the amendment. The first reason of my opposition is that in absence

of any specific definition or provision to explain the real status of bargadar in the present Tenancy Act, many difficulties arose; such as in many occasions the Small Cause Court Judges return the plaints for realisation of the price of the crop from bargadar to file in rent court finding that such suit is not within their jurisdiction, while the Munsif return those plaints when filed as rent suits to institute the case in Small Cause Court.

Secondly, in criminal cases of trespass or theft different kinds of decisions are given by different courts about the status of bargadars. Some body held that the jotedar or tenant was in actual possession of the land while others held that their possession was the constructive one through the bargadar and the bargadar was in actual possession. None of them can be said to be wrong in their finding until a definite explanation is given about the status of bargadars in this Act. This is why the clear explanation of the term "bargadar" has been inserted in the present Bill. My friend wants by his amendment to give certain rights to the bargadars which I strongly object.

Bargadar is a labourer, whose position is a little better than a day labourer. Instead of becoming a direct day labourer or a paid servant of a jotedar or a tenant to cultivate his land for him, the man has money to purchase cattle and plough with which he cultivates another's land and in lieu of his service he gets half the produce, the man who has land of his own never takes barga to cultivate other's land keeping his own land fallow.

In consideration of the remuneration of a bargadar, I challenge my friend to find out a single instance in the world where half the produce of a farm is given to the labourer. They are sufficiently paid. My friend wants to help the bargadar but by this amendment they will be heavily injured. Nobody will give their land in barga in future.

They would be compelled to be day labourers or paid servants under the owner of the land to earn their bread which would be less profitable than barga system.

I request the hon'ble members of the House to consider another fact that in case of creation of any kind of Tenancy, title or even connection of the bargadar with his barga land he cannot be changed without the help of the court. Now for an instance one man dies, leaving young children and widow to inherit some cultivable lands. This family cannot manage the cultivation by a servant or a labourer as there are none to look after the affair, hence the lands are given barga to somebody else. After some years when the children grow big enough to cultivate their own land would it be equitable for us to make such a law which will compel them to take the protection of law to bring their ancestral land under their own cultivation? There are many widows, destitute of any issue, who live

on the produce of their land cultivated by bargadars. There are many who have not sufficient land to provide their family, they generally give their lands barga to some poor cultivators and they engage themselves to some other service. With these two sources of income they meet the actual cost of their plain living.

If this amendment is carried it would be very difficult for them to live on.

My last point is that the owner of the land acquires his right by investing money from his own pocket. He takes the responsibility of paying up the zamindars from his own pocket. Every other difficulties which may arise to keep the land in possession, to keep its boundary in proper order with which the bargadar has no connection, but his tenancy will grow at the grace of this amendment. If he is allowed by this Act to enjoy such unearned property he would never take proper care for its cultivation. He would not look after the improvement of the fertility of the land.

So, I hope the House will oppose this amendment."

Khan Bahadur Maulvi EKRAMUL HUQ: Mr. President, Sir, let there be no mistake about it that the amendment as it stands does not seem to have taken away any right which other persons possessed. By deleting this proviso, do you actually take away any right from any person which he possessed before or which he possesses now? Will the jotedar under whom a bargadar holds land be deprived of the produce from the land or will he not get the exct quantity which he has been getting all the time. That is the question that I want to ask the House and that is the question which I want to put to the Hon'ble Member in charge. If there was the least possibility of the bargadars acquiring rights which they did not possess before and if there was the least possibility that the bargadars will deprive other persons of the right which they possess now, I for one would not stand up to offer the remarks which I am now making to the House and to the Hon'ble Member. To my mind, whenever there is a provision that a bargadar should give 2/3rds of the produce as well as of the fodder, he gives that to the tenant under whom he holds. Whenever there is a stipulation that half of the produce should be given, he does give that and he will have to give it, even if there is no enactment effected in the Bengal Tenancy Act which we are discussing now. This being the case, I am afraid it will not be right, proper, or just if we attempt, at such an hour as this and at a time when we are thinking of giving rights to the masses, to curtail the right of the bargadar to continue to possess the land as a tenant. Is it not a fact, Sir, that there are many places in the country where the bargadars holding lands have been recognised as tenants in the settlement operations? Is it not a fact, Sir, that this department has

also said that the bargadars will have to give a quantity of the produce to the person under whom he holds land according to the stipulation made before the settlement operations? So the recognition of a bargadar as a tenant harms nobody. The Hon'ble Member has been pleased to hold out hopes that he is quite ready to accept the amendment and delete the words "unless before the commencement of the Bengal Tenancy Amendment Act, 1928." Sir, does he mean to say that a bargadar who has not been recognised before as a tenant will, after the passing of this amendment, be recognised by any landlord as a tenant? Was it right for a Member of Government to hold out such a hope as he did before the House? My submission is that as matters stand by deleting the proviso we will not be bettering conditions. It has been said that this proviso does not make any change in the law. This is what Mr. Jitendralal Bannerjee has said. If that is so, why should he have to come forward to support a provision of this Bill like the one that stands here. I wish that he has made peace with his conscience. He stands for upholding the rights of the tenants of the soil and there is no reason why he for one could have stood up for keeping the proviso as it stands in the Bill. This is not all. To my mind this provision that a bargadar should under no consideration become a tenant is a most dangerous one which has been introduced in the Bill. As it stands, it may be considered a most innocuous one? But, Sir, take it in conjunction with the proposition which the Government and the members of the Select Committee have made with regard to pre-emption. Now, what is it that you give to the landlords by pre-emption?

Mr. JOGESH CHANDRA GUPTA: I rise on a point of order. We are now considering the provision regarding bargadars, and is my friend Khan Bahadur Maulvi Ekramul Huq right in speaking on the provisions of pre-emption?

Mr. PRESIDENT: It is not desirable that any reference should be made to the right of pre-emption at this stage; but as the Khan Bahadur was prematurely interrupted, I could not make out if that was merely a passing reference or whether he was going to labour on that point.

Khan Bahadur Maulvi EKRAMUL HUQ: What I was saying is this: that this provision that a bargadar is not a tenant taken along with the provision that has been made for pre-emption makes the position of the bargadars—the real tillers of the soil—equal to that of serfs. They will be nothing more or nothing less than slaves, in their own country. You have provided that the landlord will have the right to pay 10 per cent. over and above the price the purchaser

has paid, and he will have the right to take the land. By this means, say when 20 holdings are sold every year, 5 holdings will automatically, without the payment of a single pice, come into the possession of the landlord. Is it not that he is getting 25 per cent. on every sale? Is it not that he will compel the tenants to pay more than 25 per cent.? And will not this money be utilised for the purpose of purchasing other lands and other holdings? Then, supposing a village consisted of 100 holdings, if 20 holdings were sold out every year, 5 holdings would automatically come into the possession of the landlords. In the course of 20 years whom will you find on the land? None, but hewers of wood and drawers of water: none who can claim any right to the land they were tilling. Are you out, is the Government out, are the members of this House out, not to free the masses but to make them serfs and slaves and helots in their own country.

Mr. PRESIDENT: We have nothing to do with that at present, and I cannot allow you to labour on the point. You should confine your remarks to bargadars. I gave the House the fullest possible opportunity to discuss the general principles of the Bill. Two days were devoted to that, and it is highly desirable that members should now confine themselves to each amendment as it is thrown open for discussion.

Khan Bahadur Maulvi EKRAMUL HUQ: All that I want to say is that the House should consider this particular aspect of the question in coming to a decision as to what they should do, and I have brought that out before the House. Supposing that a bargadar does not possess any right to his land, what happens? Suppose that I am a bargadar to-day and I am very much in need of my land and I must hold it somehow: there is my hon'ble friend Mr. Nelson who is also in need of land and very hard pressed for it as he possesses none. What will he do? He will go to the Hon'ble Sir Provash Chunder Mitter and tell him "If your honor will please give this particular land, I will give you half or one-third of the produce. If you are not agreeable, be graciously pleased to take something more from me, more than what is given by the bargadar holding on and give the land over to me, because my family and children are all starving." Are you not exploiting the bargadars by withholding this right from them? Is this not what is bound to happen? Is it not a contingency that has already arisen in the country? Is it not due to this that the lands which were not worth four annas per bigha are now fetching Rs. 2, Rs. 5, or Rs. 10. It is this which will compel many persons driven by pinches of poverty to take lands from tenants and landlords at whatever prices they are offered. There will thus be competition among these persons, and be sure of it that these

people—the masses in general—who are not getting even now two meals a day will not even have half a meal to-morrow. What should be your duty? What should you do when you consider these things? It is for you to judge, it is for the Government of this country to judge, it is for the Hon'ble Member who keeps the conscience of the British Government to judge, and it is for this House to judge as to what should be done. Sir, it has been urged—and very vehemently urged—by several of my friends of the Swarajya party—and especially my friend Babu Amarendra Nath Ghose—that if we were to give occupancy rights to bargadars, we would be driving many widows, many orphans mad with grief, because we would be taking away their bread. But do my friends seriously suggest that the bargadar would decamp with the land or that he would decamp away with the produce? Will he go away to England or will he go away to America, so as not to be found any more in this country? This is never the case. The bargadar will be here on the land itself, and will be holding the very land. He will be producing the crop from that land, and because he wants to keep the land he will have to pay the share of the stipulated produce to the person under whom he holds it. So, Sir, this argument which has been advanced by some of my friends, will not hold water. It is the argument of those persons who want to keep in misery the suffering dumb millions who inhabit this country.

Sir, we the representatives of the people, we who have come here to look into matters and decide things according to our conscience, should not be swayed by the consideration that a few might suffer. We shall have to take into consideration the fact—what act of ours will benefit the largest majority. Even if it were that some people actually prejudiced by making bargadars tenants—and I may say, Sir, that out of 300 bighas more than 200 bighas of my best lands are with bargadars—but it seems that justice demands that we should deal justly with the tillers of the soil—the actual producers of the wealth of the country.

Sir, I would ask our friends, the members of the European community, who have ideas of freedom about them, who are known to be lovers of justice, to consider this question: "Will it be right that those persons, who actually produce the wealth of the country, should be left to starve in their own country while they produce enough for themselves and many?" Let them answer this question. Let them consider the matter carefully. Sir, even if there were any truth in all that has fallen from the lips of my Swarajist friends about the hardship that this will cause in the country, I would ask these gentlemen, who think themselves to be the keepers of the conscience of the country, why they have done nothing to raise their voice in the Select Committee against all the wrongs that have been done in this Bill,

and why did they not insert such provisions in the Bill as would protect the widows and orphans as well as the helpless tenantry and the bhadralok classes and the bargadars. Why did not they do it? And since they have not done it, they should stand guilty before their own conscience, if not before their own unfortunate country.

Babu MANMATHA NATH ROY: Sir, I oppose the amendment. It seems to me that most of the matters which have been introduced in the present discussion are besides the point. The only relevant question before us is whether or not the law regarding bargadars should continue in the same fluid condition as it is at the present day. It is very unfortunate, Sir, that the case law on the present subject is absolutely in a nebulous condition. Some definite law on the subject seems to be overdue. What that definite law should be is the subject matter of the amendments which follow this particular amendment, and there are no less than 50 amendments relating to that matter. When those amendments are taken up it will be for us to consider and decide what that definite law is to be. At the same time, there ought not to be any misgiving as to the position that we have taken up. I believe, Sir, that the country is for labour. I feel, Sir, that the State should give the labourer a real status, interest and stake in the land; and I also feel, Sir, that the legislature should not give much encouragement to the middlemen who live on the labours of others. There are, however, divergent views on the subject, and the amendments which follow this particular amendment will decide the question. The divergent views have to be settled once for all and a compromise reached on equitable and just lines.

Srijut BIJAY KUMAR CHATTERJEE: Sir, I carry the mandate of my constituency when I oppose this amendment. For some time past the country has been agitated over this matter and public opinion is that bargadars should not have any right on the land. This amendment cannot be supported either on fact or on principle. On fact it cannot be supported because we find that generally the owner of the land gives the land to the bargadar on condition that he will simply cultivate the land but should not have any right on it: all liabilities regarding the land remain with the tenureholder and the bargadar only cultivates the land and gets half of the produce. On principle this amendment cannot be supported because the person who owns the land had to pay for the land, and the cultivator comes in merely as a labourer, for which he is paid in kind.

Sir, one of my friends on the other side has attacked the Swaraj Party. I say only this: that the swarajists are neither for nor against any particular group or class. They stand for the country and for the benefit of the country. They are neither only for the labourers

nor only for the middle class nor only for the zamindars. We stand for all. In this matter the middle-class is vitally affected, and if the bargadar is given the right of a tenant, the middle-class people, the widows, the orphans and others will be placed in an awkward position.

Maulvi ASIMUDDIN AHAMAD spoke in Bengali, the English translation of which is as follows:—

"Sir, the amendment moved by my friend Maulvi Tamizuddin Khan merely recommends that sub-clause (a) of clause 4 be omitted. If his amendment had been moved with a view to obtain recognition of bargadars as tenants, the hue and cry that had been raised over the amendment might have had some justification. As it is, no mention is made of the occupancy right of the bargadars and the whole effect of the amendment would be to keep the existing law on the subject as it is by eliminating an additional insertion. Several of my friends have delivered lengthy speeches and lent the simple amendment an importance which it cannot claim. It was Government's duty to have given some sort of protection to bargadars. Instead of doing this Government have gone out of their way to state that bargadars are not tenants. I do not know what has induced Government to do this. I can tell Government there is an intense desire amongst landlords and mahajans to bring as much of arable lands under their khas possession as they can do by means fair or foul, and in many parts of the country the lands thus taken hold of by non-agricultural bodies are being leased out on the barga system. One evil result of this practice is that the bargadars, having no rights to the lands cultivated by them, do not take any interest to improve the fertility of the land or to increase productivity. This neglect has the effect of reducing production to half or less than what is proper. This state of things is one of the causes of famine in the country. The more the barga system will extend in the country, the higher will be the price of rice. An additional impulse to the indifference of bargadars to the land under their cultivation is that the owners of land do not allow their bargadars to cultivate the same piece of land for more than a year or a season. As zamindaries are not profitable nowadays, mahajans and Government officials evince a strong desire for bringing lands under khas possession and leasing them out on the more profitable barga system. My opinion is that those who carry on profiteering business by taking advantage of the barga system, should have no power of ejecting bargadars from the lands under their cultivation. It was Government's duty to initiate legislation to this effect. It is not a good sign for the future that arable lands are passing into the hands of non-agricultural bodies. Babu Akhil Chandra Datta is of opinion that to recognise bargadars as tenants would be Bolshevik legislation. I think, on the contrary, that the present move to take away some sort of right to

land which bargadars have obtained in some parts, is Bolshevik legislation. He has, further, sorrowfully asked on what would widows, minors and middle-class men with humble employment at different places live, if occupancy right is given to tenants? I am afraid this has softened many a heart but I think that this question does not arise in connection with the present amendment. My friend Amar Babu says that barga-cultivators are labourers. This is not true. There are many respectable men who cultivate others' lands on barga system. Bargadars are sometimes better off than landlords. Government have gone out of their way to introduce something new in the Bill which the existing law does not contain. I think that Maulvi Tamizuddin Khan has very properly moved his amendment to omit this additional clause and I support him."

5-30 p.m.

Babu SURENDRA NATH BISWAS: I find, Sir, that many of the members have been showing plenty of sympathy to the tillers of the land. Now let us see who should get the sympathy, whether the tillers of the land or the owners of the land. Sir, the question before us is, whether the clause (*a*) that has been added to section 3 by this Bill will remain or be omitted. Some of my hon'ble friends have spoken as to the utility of this clause. They have said that legislation on this point has become indispensably necessary. I should also join voice with them and say that it has become so. Sir, two bodies are primarily responsible for this legislation: (1) law court's decision and the other, (2) settlement record-of-rights. There have been conflicting decisions with regard to the rights of bargadars, and in the record-of-rights the character of a bargadar has been unnecessarily and unknowingly recorded as that of a tenant. Sir, the bargadars themselves know that they have no such character, not to speak of the owners of the land who know that bargadars cultivate the land as labourers, but they have no right of tenancy. Still there are the conflicting decisions in law courts and there is the settlement record-of-right to suggest that the bargadar has such right. Now, Sir, to settle at rest these conflicting decisions and nullify the unjustifiable presumption raised by the record-of-rights some sort of legislation is necessary. It is therefore that I welcome the legislation under discussion. But I find that some members in their sympathy for the bargadars have vehemently opposed the legislation. Sir, I would not grudge any sympathy to be shown to the bargadars if they deserve it. But naturally sympathy goes to the party who suffers by an act and not to the party who gains by it. By giving the bargadar a right of tenancy we give him some right which he himself knows he has not got and which he does not deserve, while by doing so, we rob the owner of the land of his legitimate right to hold it to himself. Sir, I stand on reason and not on sentiment that the owner of a land

who may be a widow or minor should not suffer. Let them suffer if they deserve the suffering but they must not suffer for our unjust and unfair sympathy for others. There is another phase of the question. If the bargadar is given the right of a tenant it will be discouraging the investment of money in land. Sir, we are giving the raiyat the right of transferring his occupancy holding but who will be the fool to invest money by purchasing the land if he knows that by cultivating the land on barga system he will lose his absolute right of enjoying it? A bargadar may be given not only half but three-fourths of the produce of the land—I do not grudge that but the point at issue is whether he should be given the right to hold the land which he has never enjoyed. And I think any man who has the least respect for fairness and justice should oppose the granting of such right.

Sir Abd-ur-Rahim made an observation that the bargadar is already a tenant paying a share of the produce as rent, so if this amendment is carried it will be taking away from him the rights of a tenant. Sir, the mere paying a share of the produce does not make one a tenant, the word tenant means "a person who holds land under another person and is, or but for special contract would be liable to pay rent for that land to that person." So, Sir, a tenant must be a person who rightfully holds land under another person. Share of the produce of land may seem to be rent in kind but the word "rent" presupposes a tenant who has the right to hold the land. And this right is disputed in the present discussion. I say, Sir, the bargadar is not a tenant and nowhere has he been recognised as such by law. There is no mention in the Bengal Tenancy Act of the bargadar being a tenant. There are occupancy raiyats and under-raiyats but there is no provision in the Act admitting the bargadar as a tenant. Why? Because the bargadar has an origin other than that of a tenant. Where an owner of the land could not himself cultivate the land he usually engaged a labourer to do so on condition of giving him a share of the produce as his remuneration. That was the barga system of cultivation and that labourer, Sir, is our bargadar. I therefore submit that the bargadar being not a tenant Sir Abd-ur-Rahim's argument does not hold good nor does that of my friend Maulvi Tamizuddin's whose contentions were solely based on the assumption that a bargadar was a tenant and as such his rights should not be robbed by this legislation.

With these words, Sir, I oppose the amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: The question has been debated at great length and I am afraid that throughout the debate some members have imported passion into it which might well have been avoided. The question is a very simple one, namely, whether the present law on the subject should be settled. At the

present moment Sir, the law on the subject is very unsettled. Some members have asserted that bargadars are tenants while others have asserted that they are not tenants, but there are any number of rulings in which learned Judges of the High Court, British and Indian, have laid down, after examining the facts of particular cases and applying them on well-known principles of law that bargadars are tenants.

In other cases they have held that bargadars are not tenants. Sir, throughout these cases there is one point which stands out clearly and that is this: that whenever an interest in land has been granted by the owner of the land in favour of another person, then a tenancy is created. On the other hand if the interpretation be that the owner of the land keeps the land for himself but receives merely a share of the produce for the labour of the man, then no tenancy is created. That is the general principle in the case law all through. Now, what is the proposal before the House? Speaker after speaker has said that it is a Government proposal. I endeavoured the other day to show that it was not a Government proposal. It is a proposal which is no doubt put forward by Government at the suggestion of committee after committee. What is the proposal before the House? The proposal before the House in plain language is this: If A is the owner of land and if he enters into transaction with B by which B will give a fixed quantity of the produce or any money, he is a tenant. On the other hand, if B instead of giving a fixed quantity shares in the dangers and profits with A, namely, if the produce of any particular year be 20 maunds and A, the owner, will get a certain share and B, the labourer, will also get a certain share, then B is not a tenant. On the other hand irrespective of the produce—irrespective of bad or good season if B has to pay a definite amount or deliver a definite quantity of the produce then he is a tenant and A has to accept B as a tenant. The law is not definite on the point of application of the principle to the facts of each case. If the proposal embodied in the Government Bill which is the result of the work of three committees be accepted, then for the future at any rate this question will be settled that whenever the payment is of a fixed quantity, then the owner of the land cannot say "well, my dear friend you cannot be a tenant." Then the owner of the land must accept him as a tenant. On the other hand, if the arrangement be such that profits will be divided, then the other man is not a tenant. That settles the law for the future. I have already informed the House that there is a later amendment which, subject to the vote of the House, the Government will be prepared to accept, namely, deletion of the words—"unless before the commencement of the Bengal Tenancy (Amendment) Act 1928"—the deletion of these words, will mean that both with regard to the future and with regard to the past, the law will be settled by a compromise which

is the result of the deliberations of various committees. It may not be to the entire liking of Government, but it will be helpful for the future peace as it will save both the parties from a good deal of litigation. Not merely that. We are going to propose that if there is any admission, it must be accepted; and further that the decision of the Civil Court will be final. Another question has been raised during the debate, namely, what would be the effect of the settlement entries and on that point there has been loose talking on all sides. The old members of this House are probably aware that the recommendations of the Sir John Kerr's Committee was that bhagchasis and bargadars, provided they use their own cattle and implements, should be treated as tenants. That gave rise to a great deal of agitation and Government had to issue a communiqué in the year 1923, I believe, stating that Government had decided not to accept this particular amendment of the Committee, but that they reserved for further consideration the question of preventing or regulating the extension of the system in futfure. In settlement records this is one of the main tests that was taken into consideration. It will be incorrect to say that all bargadars are recorded as tenants in the settlement records. It would be equally incorrect to say that no bargadars are recorded as such. There is a separate amendment dealing with this question; we shall deal with that when it comes. For the present the most relevant point is this: should the law be left unsettled or should it be settled? On general principles the right of tenancy must be given to the bargadar who fulfils the definition of a tenant. The word "bargadar" has got no legal definition. For the time we are now trying to give a legal definition to the word "bargadar": if you have a share in the risk you are a sort of a partner, you are not a tenant; no share in the risk, you are a tenant: That is the position; it is equitable and just. My friend, Sir Abd-ur-Rahim, has made certain criticisms. Anything which comes from a learned and eminent Judge as Sir Abd-ur-Rahim occupying the great position which he does in his community must command the utmost respect and consideration from those who after mature consideration had to come to the present conclusion. In this matter the various committees, those officers of the Government who yield to none in their desire to look after the true interests of the tenants have all come to the conclusion that it is a good compromise. I would ask Sir Abd-ur-Rahim to consider the point that unless some interest is carved out, the most elementary conception of the tenancy is non-existent. We have to meet hereafter some amendments of my friends to the right where who say that the dhankararidar is not a tenant and my friends want to oppose us and they want the House to decide that those who pay a fixed quantity of paddy or produce are not tenants—I shall want all the help of Sir Abd-ur-Rahim and

his supporters in this matter. Test it: has any interest been carved out? I am sure Sir Abd-ur-Rahim will agree with me that this is the right test. I hope Maulvi Tamizuddin Khan will perhaps see that it would be best and wise not to leave the uncertainty of the present Act as it is; so he would perhaps be prepared to withdraw his amendment. If this amendment regarding dhankarari tenants is carried against Government, I should say at once that Government would have to consider seriously whether they should proceed with the Bill. At any rate my friends, Sir Abd-ur-Rahim and Maulvi Tamizuddin Khan will, I hope, accept this suggestion and withdraw their opposition. I hope they will realise that the Bill would be an advance on the present law, and would put the bargadars on a definite footing.

Another point has been raised and that is that this is a question between the rich and the poor. There is not the slightest doubt that there are many questions involved in the Tenancy Bill which are certainly questions between the rich and the poor. The words "landlord" and "tenant" as we understand these words in the English language certainly connote the idea of rich and poor, but these words as defined in the Bengal Tenancy Act and under conditions obtaining in this country do not in many cases mean that the "landlord" is rich. The present question however is not a question between the rich and the poor; it is a question in most cases between poor and poor; it is a question between one cultivator and another in most cases and their number is legion. It is often a question between a cultivator who has perhaps to leave his village home to seek service elsewhere leaving somebody to take charge of his land and that somebody another cultivator living in the village. There may be a few rich landlords who may abuse this system but if they try to abuse this system, there are ample safeguards in the Bill which we shall have to discuss later on. Sir, the settlement records, the decisions of courts and admissions in documents are also there. If in rare cases it be a question between the rich and the poor, I make bold to say that 99 cases out of 100 it is a question between the poor and the poor, and will it not be a cruel kindness to let loose the law between the poor and the poor? I will ask my friends to consider once more when a poor cultivator comes to Dacca or Calcutta to take service leaving his land in the village in charge of somebody and an arrangement is entered into which is called barga—it is a question between poor and poor. If for such cases our proposals are accepted, the present uncertainty will no longer prevail. I do not say that what Government propose to do on the advise of its expert officers of the Settlement Department and of the Committees is perfect, but I do claim without the slightest hesitation that it is an improvement on the present uncertainty.

Maulvi TAMIZUDDIN KHAN: After hearing what had fallen from the Hon'ble Member in charge, I beg leave to withdraw my amendment.

The motion was then, by leave of the Council, withdrawn.

Khan Bahadur Maulvi EKRAMUL HUQ: I find that House has decided to protect the middle class. The House considers that by giving the bargadars the right.....

Mr. PRESIDENT: That is not relevant. I do not want you to refer to that. Please come to your amendment.

Khan Bahadur Maulvi EKRAMUL HUQ: I move that in clause 4 (*a*) in the proposed proviso, in line 4, after the word " person " the words " who is a tenant, or a tenure-holder holding less than 200 bighas of land in one village or in one jama " shall be inserted.

I want to make a few observations. I notice that the House considers that it has protected the middle-class. By doing so they have protected me also. Now, my amendment as it stands fully protects those very persons about whom the whole House is very solicitous, namely, the widows and the orphans of the country. A tenant in order to find out a living for himself has to go to other country for say five or six months in the year and he has to leave his land in charge of bargadars.

6 p.m.

It was said that even in such a case as the law stood, the bargadar would have the right and the tenant when he comes back to the land will have no land of his own. The amendment as it stands stipulates that a bargadar will not be a tenant when he holds land under another tenant. So, you see the tenants are fully protected. I feel certain that nobody should have any objection on that score. The tenants are fully protected; the widows, orphans, absent tenants and other tenants are protected and if my amendment is accepted, not only the tenants but even the persons who are greater than the tenants, viz., the jotedars, will also be protected. The jotedars will have nothing to say against the amendment. What I stipulate in my amendment is this that persons holding less than 200 bighas of land with bhagidars will not be deprived of their lands. So, Sir, a bhagidar who holds land which is less than 200 bighas in area and is in one jama or in one village, then the tenure-holder is also protected and the bargadar will not become a tenant. What objection could there be by this House for not accepting this amendment? Can anybody now honestly and conscientiously say that the middle-class men will be terribly affected and will be ruined? I am perfectly certain that if these gentlemen

were to lay their hands on their breasts, they will find that whatever the matter might be, the widows, orphans and tenure-holders have been fully protected and this being so, there does not seem any reason why the Government, the Hon'ble Member and the House would not agree to listen to what has been demanded in this amendment. You are not out to help the mahajans who gradually pounce upon the land in the village. You are out in making this law to protect the tenantry. But, will you be protecting the tenantry, if you do not give any right to the bargadar when they hold under a person more than 200 bighas of land? There will be absolutely no justification if you are still to stand up and say: No, we must stick to the Bill as we have prepared it. That may be the argument of those who are strong, but that will not be the argument of those who are just. You may put in different sorts of arguments explaining to the House that this proposition would not work satisfactorily. I need not, however, anticipate what these arguments would be and I humbly request the Hon'ble Member and the Government and the whole House to see that if such a small request which does not in the least harm any person, could not be conceded and whether Government and the members of this House should not be prepared to accept the amendment. As for my other remarks, I reserve them till the time I am given an opportunity to speak after I have heard the Hon'ble Member.

Rai Bahadur MAHENDRA NATH GUPTA: Sir, it must be admitted that the amendment proposed by Khan Bahadur Maulvi Ekramul Huq is a well meant one; but I am afraid it is unworkable and seriously unworkable. If accepted, it would mean that when a tenant having say 190 bighas gives out his land, the bargadar would not be a tenant; but what would happen, when later the same landlord purchases an additional area of 30 bighas, making his total 220 bighas? Would the bargadar then become a tenant? Similarly, if a tenure-holder with say 220 bighas of land has a bargadar under him, and later he sells off 30 bighas, would the bargadar cease to be a tenant forthwith? On principle, the status of subordinate holders cannot be made dependent on, or variable with, the quantity of land possessed by the superior holder. Such a decision can only be a fruitful source of perpetual trouble and litigation. On this ground, I think the amendment must be opposed.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I wish to say only one word with regard to this amendment. I regret hat I feel unable to support this amendment for this reason. It has been suggested that after the word "person", the words "who is a tenant, or a tenure-holder holding less than 200 bighas of land in one village or in one jama," be inserted in line 4, in the proposed proviso to clause 4 (*a*). I am sorry that I could not appreciate the mover's reasonings when

he said that it was intended for the protection of the bargadar or tenure-holder when such a man holds land under a person who has got less than 200 bighas of land in one village or in one jama. But what will happen if he holds other lands in contiguous village? I think this amendment will not affect any improvement whatsoever in the position of the bargadars whose interests the mover of the amendment is so anxious to safeguard.

The motion was then put and a division taken with the following result :—

AYES.

Ahmad, Maulvi Asimuddin.
Ali, Maulvi Syed Nausher.
Chaudhuri, Maulvi Nurul Huq.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Rahman, Maulvi Azizur.
Sarker, Rai Sahib Rebati Mohan.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Mr. Altaf.
Bagchi, Babu Remes Chandra.
Banerjee, Babu Promothe Nath.
Banmarjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chrudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Rai Harendranath.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dowding, Mr. T. W.
Drummond, Mr. J. G.
Dutt, Babu Saral Kumar.
Faroqui, Khan Bahadur K. C. M.
Forrester, Mr. J. Campbell.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkarim.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf. Khan Bahadur.
Khan, Babu Gobendra Lal.
Khan, Mr. Razaur Rahman.
Lala, Babu Sareda Kripa.
Luke, Mr. H. R.
Maguire, Mr. L. T.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Martin, Mr. C. S.
Miller, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Raiket, Mr. Prosanna Deb.
Ray, Dr. Kumud Sankar.
Ray, Maharaja Jogindra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmathe Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.

Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Sadhse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Nalinaranjan.
Sarker, Rai Sahib Rebati Mohan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Thomas, Mr. H. W.

The Ayes being 9 and the Noes 83, the motion was lost.

6-15 p.m.

The following amendments were called but not moved:—

Mr. PRASANNA DEB RAIKAT and Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh to move that in clause 4 (*a*) in the proposed proviso, line 5, after the word "share" the words "or a fixed quantity in lieu thereof" be inserted.

Srijut BIJAY KUMAR CHATTERJEE to move that in clause 4 (*a*) in the proposed proviso, line 5, after the word "share" the words "or fixed quantity" shall be inserted.

Babu JOGINDRA CHANDRA CHAKRAVARTY, Maulvi KADER BAKSH, and Babu AKHIL CHANDRA DATTA to move that in clause 4 (*a*) in the proposed proviso line 5, after the word "produce" the words "or a fixed quantity of the produce" be inserted.

Maulvi SYED NAUSHER ALI: Sir, I beg to move that in clause 4 (*a*) in the proposed proviso to section 3 (*3*) of the Act for the words "is not" the words "shall not be" be substituted.

Sir, it is purely a formal matter, and I hope the Hon'ble Member on behalf of Government will be pleased to accept it.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I do not quite follow what the intention of the mover is in proposing the substitution of the words "shall not be" for the words "is not.". He has not explained why he wants this, nor do we understand what he wants this for. The clause, as it is, is quite intelligible, and I oppose the amendment.

The motion of Maulvi Syed Nausher Ali was then put and lost.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, in the absence of Maulvi Kader Baksh, may I have your permission to move the motion which stands in his name?

Mr. PRESIDENT: I am afraid you cannot. The amendment requires the previous sanction of the Governor-General. That sanction has not yet been obtained and so we cannot take it up now: it may come up later on.

The following amendment was therefore postponed:—

Maulvi KADER BAKSH to move that in clause 4 (*a*), in the proposed proviso, line 6, after the word "tenant" the following shall be inserted, namely:—

"Notwithstanding any presumption to the contrary arising from any entry in the record-of-rights made under Chapter X of this Act, whether before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928."

The following motions were called but not moved:—

Babu AKHIL CHANDRA DATTA, Babu BEJOY KRISHNA BOSE, Babu NAGENDRA NARAYAN RAY, Srijut BIJAY KUMAR CHATTERJEE and Rai HARENDRANATH CHAUDHURI to move that in clause 4 (*a*) in the proposed proviso, lines 6 to 13, all the words after the words "not a tenant" be omitted.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, to save the time of the Council I may say that if the House will accept the next amendment, we are willing to accept it.

Babu MANMATHA NATH ROY: Sir, I formally move that in clause 4 (*a*), lines 6, 7, and 8, the words and figures "before the commencement of the Bengal Tenancy (Amendment) Act, 1928" be omitted.

The motion was then put and agreed to.

The following motion was postponed as the previous sanction of the Government of India was not received:—

***Babu JOGINDRA CHANDRA CHAKRAVARTI** to move that in clause 4 (*a*) in proposed proviso, line 6, after the words "is not a tenant" the words "notwithstanding any presumption to the contrary arising from any entry in the record-of-rights made under Chapter X of the Act, whether before or after the commencement of the Bengal Tenancy Act, 1928" shall be inserted.

The following motions were called but not moved and therefore deemed to be withdrawn:—

Babu JITENDRALAL BANNERJEE and Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 4 (*a*) clause (*i*) to the proposed proviso shall be omitted.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I beg to move that in clause 4 (*a*) for clause (*i*) of the proposed proviso, the following shall be substituted, namely:—

"(*i*) such a person has been expressly admitted to be a tenant by the owner of such land in any document executed by him or executed in his favour and accepted by him."

The object of this amendment is to make the scope of the clause clear, because questions may very well arise as to the real implication of the words "he has been admitted in a document by the landlord to be a tenant." The clause says: "admitted in a document by the landlord." Document executed in whose favour, and in what way? Questions like these may arise. In order to make the clause more clear, I think, there should be an expressed admission in the document executed by the landlord or executed in his favour and accepted by him.

Sir ABDUR-RAHIM: Sir, I oppose the amendment which has been moved by Babu Jogindra Chandra Chakravarti. It is simply putting more restrictions and more difficulties in the way of the tenants. Admission according to general law applies to all, of which the benefit ought to be enjoyed by bargadars as well as others. Admission may be by document, by conduct, or by word of mouth. Why must it in this case be restricted to admission by a document? The amendment, if carried, would deprive the bargadars as a class of the benefits of the Evidence Act which applies to all. This is an unjust, a retrograde amendment, and the House should not accept it.

Babu JITENDRALAL BANNERJEE: Sir, my position in this matter is simply this. I think Mr. Chakravarti's amendment is absolutely unnecessary. I should ask him therefore, most earnestly to withdraw it. The position of the bargadar is weak and precarious enough already: why make it weaker still by imposing unnecessary restrictions?

Babu SURENDRA NATH BISWAS: Sir, I think this amendment to be very much necessary. Of the two parties which are primarily responsible for the introduction of the additional clause, that the bargadar is not a tenant, one is the settlement department. Section 102 of Chapter X, under which the record-of-rights is prepared, contains nothing which empowers the settlement authorities to treat the bargadar as a tenant. Section 102 says:

"Where an order is made under section 101, the particulars to be recorded shall be specified in the order, and may include, either

without or in addition to other particulars, some or all of the following, namely:—

(*a*) the name of each tenant or occupant;

(*b*) the class or classes to which each tenant belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, settled raiyat, occupancy raiyat, non-occupancy raiyat, or under-raiyat, with or without a right of occupancy, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;

(*c*) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;

(*d*) the name of each tenant's landlord;

(*dd*) the name of each proprietor....."

Khan Bahadur MUHAMMAD ABDUL MUMIN: On a point of order, Sir. Is the member in order in discussing at this stage Chapter X of the Tenancy Act?

Rai HARENDRANATH CHAUDHURI: Sir, I submit Mr. Biswas is perfectly in order, because Jogindra Babu's amendment says that the admission must be in a document and Mr. Biswas's point was that the record-of-rights may not be considered as an "admission," and therefore there is necessary connection between this amendment and what Mr. Biswas has been saying.

Mr. PRESIDENT: I think you are right. Mr. Biswas was within his bounds when he made those remarks.

Babu SURENDRA NATH BISWAS: I was referring to section 102. It does not empower the authorities to record the bargadar as a tenant. I can say from personal experience that the bargadars who hold lands under kabuliyat and hold the same as labourers on the condition that they are to get a portion of the produce of the land as their remuneration were recorded as occupancy raiyats or under-raiyats. I am afraid those records will be treated as documents referred to in the Bill on the ground that the records were prepared in the presence of both the parties. Sir, the Hon'ble Member in charge of the Bill has said in connection with Maulvi Tamizuddin Khan's amendment that the Bill will be an advance in the way of the bargadars' rights.

The Hon'ble Sir PROVASH CHUNDER MITTER: No, Sir, I never said that.

Babu SURENDRA NATH BISWAS: I accept what the Hon'ble Member says now. But, Sir, I am concerned with the interpretation of the Bill on this particular point. The question is whether the bargadars whose status has been recorded in the record-of-rights as raiyats and under-raiyats will be treated as a tenant or not. The reading of the Bill impresses one with the idea that the bargadars will not be tenants. But when I heard Sir Provash to say that the bargadars who were recorded as tenants might avail themselves of the records, I was firmly convinced that the amendment was necessary. It has been said that there are some bargadars who were recorded as tenants and there are others who were not. But speaking from my personal experience of the district of Faridpur and from what I have heard the other members coming from other districts to say in the lobby I can say that in the last settlement operations all the bargadars have been recorded as tenants. I now want that when the House has accepted the position that the bargadar is not a tenant the presumption of settlement records should not be allowed to be availed of in his favour. I do not grudge if he has any right, nor do I want to take away any right if he has got any. But I do not like to keep any room for doubt in the interpretation of law in the law courts. Sir, we all know that the lawyers can make something out of nothing. So if there remains any ambiguity in the law attempts will surely be made to utilise the settlement records to deprive the owners of the lands of the right which is intended to be recognised by this Bill. The proposed amendment makes the position clear, it limits the circumstances under which alone a bargadar may be regarded as a tenant.

Babu BIJOY KRISHNA BOSE: I beg to support the amendment of my friend Babu Jogindra Chandra Chakravarti. In his short speech he explained the object of his motion. But speaking on the abstract principles of the Bill I should like to say that the Bill will enure more to the benefit of the lawyers than to that of the landlords or tenants; the only class to be benefited will be the lawyers. It will take at least 15 years or 20 years for courts of law to understand what was the intention of the legislature. Lawyers will interpret every clause, every section with ability and ingenuity and the Council will interpret in various ways. Then there will be appeals and second appeals, perhaps appeals to the Privy Council. Then it would take another ten years for the Law to settle down, that is, the life of a generation will be passed to understand the intention of the legislature and to give effect to it. We want to make it quite clear that the document must be a document by the owner of the land or executed in his favour and accepted by him. If you accept that, the intention of the legislature would be quite clear and there would be no hair-splitting arguments used in courts of law as to what the legislature meant by the word "document." I can give one concrete instance. Road cess returns

are filed. The owner of a land himself might not know the names of his bhagidars, adhiars, etc., and his officers might mention them as projas and it may be argued that when a zamindar has accepted him in this way the bargadar at once becomes his tenant. Therefore a document must be quite clear, it must be a document executed by two persons—the owner of the land or the bargadar or bhagidar. It the document is executed by the owner and accepted by him then only the bargadar will be a tenant, otherwise not. The amendment makes the position perfectly clear and should be accepted.

Khan Bahadur Maulvi AZIZUL HAQUE: I will speak only a few words especially after hearing my friend Babu Bijoy Krishna Bose who has shown at this late stage of life so much anxiety to decrease litigation. The intention of Babu Jogindra Chandra Chakravarti's amendment to make the position perfectly clear is not intelligible to some of us on this side of the House. He has quoted an example saying that a man who cultivates another's land cannot be called a tenant. I have not been able to see the logic of the contention. Surely a landlord who is ignorant of his own rights cannot take advantage of the right of his tenants. The amendment operates against the granting of any right to the bargadars who hold land. I am opposed to it on the ground that it does not strictly define the position of bargadars. My friend Babu Jitendralal Bannerjee has said that their position is already precarious. So do not make it more so. It has to be remembered that bargadars make up a large section of the people of our country. There is no reason why we should take away the rights already vested in them, where they have for that will be the effect of the acceptance of this amendment.

Babu AMULYA CHANDRA DATTA: I am sorry to have to differ from my friends Babus Jogendra Chandra Chakravarti and Bijoy Krishna Bose. I really do not see why the nature of the document containing such an admission should be restricted in any way. Babu Bijoy Krishna Bose seems to labour under the impression that the admission made by the agent in the Road Cess returns referred to by him will operate as an estoppel. The landlord will not certainly be bound by such admission if he can show that it was not done in good faith, or made under a wrong impression or mistake. Sir, I am not one of those who think that bargadars should have no right to the soil at all, for there are bargadars and bargadars. There are a certain class of bargadars who do not contribute anything to the improvement of the soil, and I would be the last man to give them any right, but there are bargadars who contribute to the improvement of the soil and the question is whether this class of bargadars has any right to the soil. In the Bill now before the House I do not see any such distinction made and we have got to leave it to custom; but, Sir, I

do not think we ought to restrict the rights of the bargadars in the way contemplated by the amendments under discussion. We find that an attempt is made in the present Bill to curtail the existing rights of the bargadars. So far as the status of bargadars is concerned the last Bill had gone too far. But in the present Bill the pendulum has swung too far back. The object of the new Bill should be, if possible, to enlarge the rights of the tenants and those who are connected with the soil and certainly not to curtail the existing rights in any way. If the bargadars have acquired any right, let them continue to enjoy them. In this view of the matter, Sir, I would respectfully ask Babu Jogindra Chandra Chakravarti to withdraw his amendment, because I am of opinion that the present right should not be interfered with, nor should the nature of the document in which the admissions are made by the landlord, be restricted in any way.

Babu SASI SEKHAR BASU: I am of opinion that this motion should be accepted, although Mr. J. L. Bannerjee does not agree with this view. If the language be, however, not "by the landlord" but "by his landlord," I think it would totally be in agreement with the language of the amendment that has been put forward by Babu Jogindra Chandra Chakravarti. I think the intention of the amendment is that the admission should be made by the immediate landlord; therefore there is no difference between Jogindra Babu's amendment and the clause in the Bill. I therefore think that the matter be placed beyond all criticism and doubt by accepting the amendment.

Srijut BIJAY KUMAR CHATTERJEE: The section in the original Bill with regard to the admission in a document is very vague one and it is not clear what it means. The admission in a document by a landlord may mean many things. Mr. B. K. Bose has pointed out that it may mean road cess return or a statement in any record-of-rights which the landlord may not himself know: So Mr. Chakravarti has tried to make the position clear by this amendment. I think the House should accept it, for we should avoid all unnecessary litigation. With these words I support the amendment.

[At 6-40 P.M., the Council was adjourned and it re-assembled at 6-55 P.M.]

Maulvi SYED NAUSHER ALI: From the speeches that we have heard there seems to be no doubt that there are hon'ble members who believe in the omnipotence of lawyers and folly of judges. To err is human and judges are human creatures and as such natuarlly liable to error. Nor can it be denied that lawyers do often in the interest

of their clients put their case in the most favourable light possible. But that is no reason why there should be any restriction on the rights of the bargadars. Coming to the amendment proper, I have only to refer to one point. It has been stated that the word "the" is ambiguous. I do not know whether there is any ambiguity whatsoever in it. The "the" evidently means "his.".

Mr. PRESIDENT: There is so much noise that side that I cannot hear any thing. I hope members will keep silent.

Maulvi SYED NAUSHER ALI: Coming to Jogindra Babu's amendment I do not understand how that is clearer or less ambiguous than the provision in the Bill. The word "owner" is certainly more ambiguous here. We all know that the zamindar is the owner of the land. (Cries of "No, no.") Whatever that may be it is undesirable that the raiyat is not the owner of the land (Cries of "No, no.") What I mean is that under the present law the raiyat is not the owner of the land, though they should be such. If this amendment be carried the very thing that my lawyer friends are trying to avoid, namely, litigation, owing to ambiguity in expression, will crop up in many ways. This is one of the strongest reasons why this amendment should not be accepted.

There is another point and that is this: an attempt has been made to put in the word "expressly." What is the meaning of the word here. It requires careful examination. It can never be expected that in the very document creating a bargori tenancy the bargadar should be expressly described as a tenant. If we accept the amendment the result will be that a bargadar will never be in a position to prove that he is a tenant. Therefore I submit that this amendment should be opposed and I oppose it strongly.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I rise to oppose this amendment and in doing so I agree with the remarks which have been made by Sir Abd-ur-Rahim. The language in the Bill is "unless he has been admitted in a document by the landlord to be a tenant". I think the word "admission" here is sufficiently clear and is meant to include all sorts of admission by the landlord. I do not see why the landlord's admission should be limited in any way. What the mover of the amendment intends is to limit that admission only to documents which are executed by him or executed in his favour and accepted by him. There can be no documents executed by the landlord. (A VOICE: What about the kabuliat?) I do not think kabuliats are accepted, in the proper sense, by the landlord; kabuliats are executed by tenants but there is no sign of

acceptance in them by landlords. In the case of a dispute the landlord always says that it was executed in his absence. The admission may be in the road cess returns, for instance, the landlord files a return and he admits in it that such and such a man is a tenant.

I submit why should not that admission go against the landlord. If in partition cases between two brothers the statement is made that a certain man is a tenant, that has also to be taken into consideration. Why should not that admission be taken in favour of the tenant? There is another sort of admission in the preparation of the record-of-rights. (VOICES: Ho—Ho.) Perhaps my friends on the right will at once shy at this word. There we often find it is admitted in the pattas that such and such a man is a tenant on the north or south of the holding. That is an admission of which the tenant should have the benefit. If the amendment is accepted, all these admissions of the landlord will be excluded from the scope of the Bill. I think Jogindra Babu is in an unenviable position of a man who puts a dagger in a dead horse; he wants to put more nails into the coffin of the bargadars. For these reasons I strongly oppose the amendment.

The amendment of Babu Jogindra Chandra Chakravarti was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Rames Chandra.
Banerjee, Babu Premetha Nath.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Bose, Babu Bejay Krishna.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Rai Harendranath.
Das Gupta, Dr. J. M.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Sarai Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Gupta, Mr. Jagesh Chandra.
Khan, Babu Debendra Lal.
Laha, Babu Saroda Kripa.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakanath.
Mukerji, Mr. S. C.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Nem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Azizur.
Raikat, Mr. Prosanna Deb.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Ray, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Sanyal, Babu Sachindra Narayan.
Sarkar, Babu Nalinirenjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Ahamad, Maulvi Asimuddin.
Ahammad, Maulvi Kaviruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Mounber.
Atiqullah, Mr. Syed Md.
Bannerjee, Babu Jitendranat.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.

Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Dash, Mr. A. J.
Drummond, Mr. J. G.
Ghose, Mr. M. C.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Shramul.
Huq, Mr. A. K. Fazl-ul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
Ismail, Khan Bahadur Maulvi Muhammad.
James, Mr. F. E.
Karim, Maulvi Abdul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maguire, Mr. L. T.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Momin Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Rahim, Sir Abd-ur.
Rahman, Maulvi Shamsur.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur.
Rauf, Maulvi Syed Abdur.
Reid, Mr. R. N.
Sachse, Mr. F. A.

The Ayes being 46 and the Noes 42, the following motion was carried:—

"That in clause 4 (*a*) for clause (*i*) of the proposed proviso, the following shall be substituted, namely:—

'(*i*) such a person has been expressly admitted to be a tenant by the owner of such land in any document executed by him or executed in his favour and accepted by him.'"

Mr. PRESIDENT: It has been brought to my notice that in the division which we had over item No. 14, Rai Sahib Rebati Mohan Sarkar passed both the tellers. His vote will therefore be expunged from both the lists.

Adjournment.

The Council was then adjourned till 3 p.m., on Tuesday, the 14th August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Tuesday, the 14th August, 1928, at 3 P.M.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, and 116 nominated and elected members.

Alterations of Sitting Hours in Council.

Mr. PRESIDENT: Gentlemen of the Council, I received a largely signed representation yesterday, suggesting that during the present session the Council should sit at 2-45 p.m. and that I should adjourn the Council everyday at 6-30 p.m. A telegram was sent to His Excellency for necessary permission and I am glad to be able to say that he has permitted the Council sitting at 2-45 p.m. So far as the adjournment is concerned, it is in my discretion and I think there will be no difficulty about that.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

Mr. PRESIDENT: Having regard to the fact that Babu Jogindra Chandra Chakravarti's amendment was carried yesterday the next 11 amendments do not arise because the original proviso has been washed away by the amendment.

Clause 4.

The following amendments therefore failed:—

Maulvi SYED NAUSHER ALI to move that in clause 4 (*a*) in clause (*i*) of the proposed proviso after the words "has been" the words "or is" be added.

Mr. PRASANNA DEB RAIKAT, Mr. SATYENDRA CHANDRA GHOSH MAULIK and Maharaja SHASHI KANTA ACHARJYA CHAUDHURY of Muktagacha, Mymensingh to move that in clause 4 in the proposed proviso (*a*) (*i*), line 1, after the words "he has been" the words "clearly and expressly" be inserted.

Mr. BIJOY PRASAD SINGH ROY to move that in clause 4 in sub-clause (*i*) in the proposed proviso to clause (*3*) of section 3 before the word "admitted" the word "expressly" shall be inserted.

Khan Bahadur Maulvi AZIZUL HAQUE to move that in clause 4 (*a*) in section 3 (*3*) of the Act in clause (*i*) of the proposed proviso after the word "admitted" the words "or recognised" be inserted, and for the words "a document" the words "any document" be substituted.

Mr. A. K. FAZL-UL HUQ to move that in clause 4 (*a*) from clause (*i*) of the proviso the words "in a document" be omitted.

Raja BHUPENDRA NARAYAN SINHA Bahadur of Nashipur to move that in clause 4 (*a*) in line 1 of clause (*i*) of the proposed proviso to section 3 (*3*), for the words "in a document" the words "in the instrument creating the lease" shall be substituted.

Babu SARAL KUMAR DUTT to move that in clause 4 (*a*) in section 3 of the Act in clause (*i*) of the proposed proviso for the word "document" the word "lease" be substituted.

Raja BHUPENDRA NARAYAN SINHA Bahadur of Nashipur to move that in clause 4 (*a*), in the proposed proviso clause (*i*) for the words "a document" the words "an instrument, if any, creating to the lease" be substituted.

Babu NALINIRANJAN SARKER to move that in clause 4 (*a*) in proposed proviso (*i*), line 2, for the words "by the landlord" the words "between the landlord and the tenant" shall be substituted.

Maulvi KADER BAKSH to move that in clause 4 (*a*) in clause (*i*) of the proposed proviso, line 2, after the words "by the" the word "immediate" shall be inserted.

Mr. A. K. FAZL-UL HUQ to move that in the proviso proposed in clause 4 in clause (*i*) the words "expressly or by implication" be added at the end, after the word "tenant".

The following amendment was called but not moved and therefore deemed to be withdrawn:—

Mr. PRASANNA DEB RAIKAT and Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 4 in the proposed proviso *(a)* *(ii)*, line 1, for the word "held" the word "adjudged" be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 4 *(a)* in section 3 *(3)* of the Act in clause *(ii)* of the proposed proviso after the words "Civil Court" the words "or a revenue officer purporting to act under the provision of this Act or in any record-of-rights," be inserted.

My intention is this: It is about the present status of some of the bargadars.....

Maulvi SYED NAUSHER ALI: May I rise on a point of order about my amendment No. 36.

Mr. PRESIDENT: We are dealing with amendment No. 51.

Maulvi SYED NAUSHER ALI: I could not catch you, Sir, but I want to speak on my amendment No. 36.

Mr. PRESIDENT: We are dealing with amendment No. 51 now and your request does not appear to be reasonable.

Maulvi SYED NAUSHER ALI: May I rise on a point of order. I want to point out that had there not been a printing mistake you would not have passed over this matter. I think in No. 36 there is a printing mistake. My amendment covers both clauses I and 2 and it does not appear you have disallowed that amendment.

Mr. PRESIDENT: My point is this: You should have raised this matter when I actually said that this amendment did not arise at all. You are too late. Then again I find that it has already been covered by amendment No. 35, so you are not aggrieved at all.

Maulvi SYED NAUSHER ALI: As regards the first point I could not catch you.

As regards the second point my amendment covers both the clauses and in this amendment only one clause appears.

Mr. PRESIDENT: I shall go on with Khan Bahadur Maulvi Azizul Haque's motion as it is already before the Council. If you have any grievance you can let me know after it is disposed of.

Maulvi NURUL HUQ CHAUDHURI: Some of the amendments which had been disallowed I find in this book. I will be thankful to you if you will kindly tell me what is the proper time to draw your attention to them.

Mr. PRESIDENT: I do not know what is your source of information. You can raise the point later on if you like. Let us finish the matter which is already before the House.

Sir ABD-UR-RAHIM: On a point of order. This is as regards amendment No. 42. I submit that the question has not been discussed before. We have been discussing all this time whether there should be a document, but what sort of document that should be, that question has not been discussed. We have only to discuss what sort of document that should be and it is a very important point.

Mr. PRESIDENT: I can only repeat what I have already said. You, too, like Maulvi Nausher Ali did not protest in time. But I may tell you that you have nothing to complain of as the original proviso has actually been washed away by the amendment which was carried yesterday so the amendment you refer to does not arise, regard being had to the fact that it relates to that proviso.

Khan Bahadur Maulvi AZIZUL HAQUE: Members of this Council will notice that under the definition of a tenant, as it stands, a tenant means a person who holds land under certain conditions. Under the proviso to the clause, a certain number of people will be declared to be tenants under such conditions. These conditions are that they have been admitted by a document of the landlord to be tenants as admitted in the amendment of Babu Jogindra Chandra Chakravarti, and also that they have been declared by a civil court to be tenants. I want to draw the attention of the house to one important fact. For the last year's settlement operation had been going on throughout Bengal and in these settlement operations a large number of people have been given the status of tenants. The effect of the present Bill if this particular clause be carried would be to do away with the rights of those bargadars who have been given the status of tenants in the settlement operations. I think it is not the intention of this Council or of Government or of any legislature to do away with these rights which have already been recorded in the settlement operations. My amendment means that a person who has already been recorded a tenant in a record-of-rights should be declared to be a tenant for the very simple reason that when he had been recorded as a tenant it was open to the landlord to bring a civil suit or take proceedings under section 106. If the landlord did nothing of the sort it is not open to

him to say that this or that person is not a tenant. Therefore my first suggestion is that so far as this clause is concerned those people who have been recorded as tenant should be recorded as tenants and should remain so.

My second point is that you are giving certain rights to a man admitted as such in a document; you are giving a certain status to a man who has been declared by a civil court to be a tenant. This class of people is likely to be dealt with also during the settlement operations by the revenue officers and these officers go to the spot, consider the respective rights of the parties and decide whether a man is a tenant or not. Therefore my suggestion is this that in this clause after the words "Civil Court" the words "or a revenue officer purporting to act under the provision of this Act or in any record-of-rights" be inserted. I formally move the amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I oppose this amendment and on this ground. It has been said that after the words "Civil Court" the words "or a revenue officer purporting to act under the provisions of this Act or in any record-of-rights" should be added. Before proceeding further I will just draw the attention of this house to the Statement of Objects and Reasons under the signature of Sir Nalini Ranjan Chatterjee in paragraph 7. It says: "As regards produce-paying cultivators it has been considered reasonable to recognise dhankararidars or cultivators to pay a fixed quantity of the produce as raiyats or under-raiyats as the case may be. Bargadars and adhiars who have been admitted in a document by their landlord to be tenants or have been held by a civil court to be tenants will be recognised similarly as raiyats or under-raiyats, but other bargadars or adhiars have been excluded from the definition of tenant. This new provision will apply with retrospective effect even to those cultivators of this class who have been recorded in a record-of-rights as raiyats or under-raiyats unless they come under the category described above." That being so, I submit that this proposed amendment seeks to introduce something which is against the objects and reasons.

My next ground is that a record-of-rights under section 103 (5) raises merely a presumption as regards the correctness of an entry, which presumption is liable to be rebutted. When there is this provision already that a bargadar will be a tenant if he has been held by a civil court to be a tenant, the question whether he is a tenant or not is a matter to be decided by the civil court and under the law entry in the record-of-rights can be used as evidence in his favour. To say that because there is this entry he must be a tenant, I submit that will be against the very spirit of section 103 (b). Therefore to introduce that clause as proposed by my friend Khan Bahadur Azizul Haque,

if there is an entry in the record-of-rights that that entry will be conclusive evidence of the fact that the person is a tenant, will be against the intention of the Act itself. With these words I beg to oppose the amendment of Khan Bahadur Azizul Haque.

Maulvi SYED NAUSHER ALI: I rise to support this amendment. I will first of all answer the arguments advanced by my learned friend Babu Jogindra Chandra Chakravarti. He has said that it is against the very Objects and Reasons, for this amendment asks that the bargadar who has been recorded as a tenant be recognised and given the status of a tenant. The principle of the whole legislation, as explained by the Hon'ble Member in charge, is this: that there should be no ambiguity as to the status of the bargadars. This house has also agreed that the sole object of the definition of bargadar is to settle the unsettled state of the law as to the status of bargadars. My point is if we accept the bargadar who has been recorded in a settlement record as a tenant much litigation will be stopped. The settlement records are Government records prepared at a very great cost to the people. I beg to submit that if the proposed section be passed as it stands and this amendment be not added, the result will be that those records will be so much waste paper which could be thrown into the waste paper basket, and it will also prohibit giving the bargadar the right which the records want to give him.

Now as to the second clause: "Unless he has been held by a court to be a tenant," what is the meaning of this expression? It is clearly expressed that unless he has been held by a court to be a tenant he cannot be a tenant. Therefore the position is this: a bargadar will be a tenant only and only when he comes under any of the two provisos, namely, (1) when he has been expressly admitted to be a tenant in the very document which created that bargadari tenancy, if I may say so: and (2) when he has already been held to be a tenant by a civil court. There can be no other explanation than this. If my learned friend agrees in this interpretation of the second clause then it will not be open to the court in future to come to the conclusion in view of the facts and circumstances of a case that a certain bargadar is a tenant. The court will only be competent to see if he has previously been held by a civil court to be a tenant. And so much of his argument will lose its force. It is clear from the wording itself that he can be held to be a tenant only when he comes within the second clause, and what is the second clause? The court will not be competent to go into the facts. If the court cannot say on a survey of the facts "I come to the conclusion that there is a right carved out in favour of the bargadar and that he has acquired the right of a tenant," then the sole object of the legislation

will be frustrated. But the court will be competent to go into the facts only to see if a particular bargadar has been previously held by a competent court to be a tenant and, if so, to declare him to be a tenant. Therefore my submission is this: if the amendment goes the result will be that the settlement record-of-rights, which has been prepared by men belonging neither to the zamindars' nor to the tenants' party but to an independent party and over which so much money and labour has been spent, will be mere waste paper. I do not know what is the attitude of Government on this point but I understand they will oppose the amendment. I want to know why their officers spent so much public money in the preparation of these records if they were to be treated as waste paper and nothing else? I submit Government cannot go back upon their own work. Government ought to support the tenants and come forward and say, "We will support those people who have been declared by our officers to be tenants."

There is one more point to which I want to draw the attention of the House. My friends here yesterday seemed to be very anxious to see that there might not be any source of litigation left open by any loopholes in this legislation. We, who represent the poorer and weaker people, are also very anxious that this is done. My friend Babu Surendra Nath Biswas said there were foolish judges and omnipotent lawyers and those omnipotent lawyers will not be within the reach of the poorer and weaker people.

Babu SURENDRA NATH BISWAS: I did not use those words. What I said was that judges were sometimes led away by the clever arguments of the lawyers.

Maulvi SYED NAUSHER ALI: Those words were not perhaps used by my learned friend but what he said came to that. Of course my learned friends are wise enough but what I was submitting was this. Assuming that my learned friend Babu Jogindra Chandra Chakravarti is right and the Bill is passed as it is, and this amendment is not accepted, what will be the result? The result will be litigation and more and more litigation, because it will be open to a tenant to go to a court and show the settlement records. We, the representatives of the poor people, want that the door of litigation is closed as much as possible. If you will simply give these people the status of a tenant much litigation will be stopped. With these remarks I support the amendment of my friend Khan Bahadur Maulvi Asizul Haque.

Khan Bahadur Maulvi EKRAMUL HUQ: I rise to support the amendment. The request made in this amendment is to my mind very reasonable, but I do not know if it would be considered so by

the Hon'ble Member of Government. What is wanted is that the fact of the bargadar having been recognised as a tenant in a previous Government paper, should be considered to be sufficient enough to give the bargadar the right of tenancy. As the provision in the Bill stands it seems to exclude that man from that right. My friend Babu Jogindra Chandra Chakravarti has in a way said that he has that right. I do not know if he is really giving an expression of his real feeling or if he is wanting to make the House take it as a fact which is not a fact. I am perfectly sure that my friend does not believe in the exposition that he has made before the House. By adding this amendment you simply make the bargadars, who are recognised as tenants in your papers, which you have prepared at a very great cost, cost which was borne for the preparation of the record-of-rights both by Government as well as the people, tenants. Are you going to throw away all these costs? Are you going to say that the right which has been given to these bargadars should be taken away from them? I know that this is not the wish of Government and I think it will be the desire of Government actually to protect the tenantry, the masses; but are they going to protect the masses by taking away the right of occupancy of the bargadars, which had been given in their papers? If you actually want to recognise the facts recorded in the record-of-rights you ought to say so plainly that those particular persons whose names have been recorded as tenants in the record-of-rights should be considered by law to have become tenants. It is necessary to put this in the Bill itself.

MEMBER in charge of DEPARTMENT of REVENUE (the Hon'ble Sir Provash Chunder Mitter): The amendment of my hon'ble friend Khan Bahadur Azizul Haque is to the effect that after the words "Civil Court" the words "or a revenue officer purporting to act under the provision of this Act or any record-of-rights" be inserted. The lawyer members of this House know the position, but there are members of this House who are not lawyers, so I will explain to the House generally, that revenue officers act in two stages. One stage is up to section 103 (B) when there is a final publication. Up to that stage the proceedings of the revenue officers are summary in character; they make enquiries in the field and other enquiries, and they come to a conclusion and as a result of that conclusion an entry is made; and under section 103 (B) a presumption of correctness is raised with regard to that entry. After 103 (B) the judicial stage begins and under sections 105, 105 (A), 106 and so on the revenue officer acts as a civil court under the procedure laid down in the Civil Procedure Code, the Evidence Act and so forth and under section 107, the decision of the revenue officer in the subsequent judicial stages of the proceedings amounts to a decree of a civil court.

3-30 p.m.

So far as the second stage of the proceedings is concerned, the words we have in clause (*ii*), namely, "He has been held by a civil court to be a tenant," are quite wide enough, that is to say, a revenue officer acts as a civil court and section 107 applies. If my friend Khan Bahadur Maulvi Azizul Haque has any doubt on that point, and if the House permits it, we have no objection to a modification for greater safety to the effect, that the decision of a revenue officer under sections 105, 105 (A), 106, and 107, will be treated as a decision of a civil court—I am not using drafting langauge but merely stating the substance of my idea—Government will have no objection to such a change; but such a change, as I have said, can only be permitted with the leave of the House. However, I would point out that perhaps such a modification is not necessary, because when a revenue court deals with civil rights it is a civil court. In the well-known Privy Council case of Nilmony Singh Deo vs. Tara Nath Mookerjee, G.I.A.-P.174, it has been held that a revenue court dealing with civil rights is a civil court.

Now, I will take up the other portion, viz., when a revenue officer acts in a summary way. Under our draft Bill we are taking away no rights created by a presumption raised under section 103 (B). Section 103 (B) will still form part of the Act. Therefore, under section 103 (B) the presumption of correctness will still be raised. Well, that is undoubtedly a rebuttable presumption. I am sure my friend, Khan Bahadur Azizul Haque, does not want that a rebuttable presumption should be turned into a conclusive presumption. If he does not want that, then he has no grievance. On the other hand, if he means that a rebuttable presumption will be a conclusive presumption then a distinguished lawyer like himself will at once see that it will not be right. Supposing some entry has been made by mistake, then if it becomes a conclusive presumption there will be no remedy against the person regarding whom a record has been made, be that person a tenant or a landlord. But, perhaps, that is not his object. Now, Sir, other arguments have been used, namely, suppose valuable rights have been acquired, what happens? Let us take the case of an entry in the record-of-rights. A presumption of correctness under section 103 (B) is raised and more than 6 or 12 years have elapsed. In that case the Khan Bahadur will agree with me that it is not a question for the Bengal Tenancy Act, but a question for the Limitation Act. There the right of the tenant is perfected by the Statute of Limitation whether the entry has been erroneous or not. If the entry has been allowed to stand beyond the statutory period, the right of the tenant will be perfected. Now, if the entry was not allowed to stand, or questioned, or challenged, before the statutory period, then under the present law it is a rebuttable presumption,

though it still remains a presumption, because section 103 (B) is there.

With regard to Maulvi Syed Nausher Ali's remark that the settlement entries and papers will be so much waste paper, I say they will certainly not be so. On the Bill as it stands they will not be waste paper, they will be very valuable pieces of evidence, evidence which will raise the presumption of correctness and anyone who challenges that presumption will have to prove that that entry was not correct. I shall presently explain and when I have explained I trust my friend Maulvi Syed Nausher Ali's doubts will be removed. Well, Sir, any entry made before the passing of the amending Bill will be an entry made under the present law. Therefore, a settlement officer who makes such an entry under the present law will be acting on his interpretation of the present law. Whether his interpretation of the present law is right or not, is always open to the civil court to decide. Therefore, we are not taking away any rights. It will be a mistake to suggest that we are taking away the rights already existing, because if the settlement officer records on his interpretation of the present law the civil court may, as indeed it has said in many cases, say that the interpretation is not correct. Therefore, if you take away the rights of the civil court, you take away very valuable rights. After all, although settlement officers try to do their best, although they have many advantages—the advantage of local inspection and of their expert knowledge, their knowledge from field to field yet even the best of them will admit that after all they are men and they are liable to make mistakes. Now, if you leave the door open to the civil court, you perhaps act with the best advantage to all parties concerned. Therefore, I submit, Sir, that it is not necessary to have this amendment. The reasons which have been put forward, I believe, I have met. I will ask my friends to consider carefully the reasons I have put forward. If the amendment be not accepted by the House, still under section 103 (B) the presumption of correctness will be there, and perhaps that is what we want.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of interpretation, may I ask what will be the position of those bargadars who have been recorded as tenants in the record-of-rights if my amendment be not accepted.

The Hon'ble Sir PROVASH CHUNDER MITTER: So far as I can judge, under section 103 (B) there will be a presumption of correctness in their favour and in a civil litigation they will start with that presumption of correctness, that is, where the record-of-rights has been made before the amending Act comes into operation. After the amending Act comes into operation, then the settlement officers will presumably apply the law then prevailing.

Khan Bahadur Maulvi AZIZUL HAQUE: May I put a few more questions for a little elucidation of this matter which is of the utmost importance?

The Hon'ble Sir PROVASH CHUNDER MITTER: I am willing to be cross-examined as this matter is of the greatest importance.

Mr. PRESIDENT: Khan Bahadur, you may put questions, but you are not entitled to give any reply.

Khan Bahadur Maulvi AZIZUL HAQUE: Will not there be a little conflict of law, namely, in all proceedings held under this Act prior to the passing of the present amending Bill, a man who has been recorded as a tenant will be treated as such, whereas the present Bill says he will not be a tenant. If the present Bill had not been brought, he would have been a tenant. He will get a presumption, will that presumption stand?

The Hon'ble Sir PROVASH CHUNDER MITTER: I am obliged to the Khan Bahadur for giving me an opportunity to explain the position. Now, take to-day, the Bill has not come into operation, the record-of-rights is finally published to-day; well, on the record-of-rights as finally published the presumption of correctness is raised; we have not got to-day the amending Bill; now let us assume for the sake of argument that the Bill will come into operation, as Mr. Akhil Chandra Datta wants, on the 1st day of January, 1930, and let us assume that the record-of-rights is finally published in February, 1930. In February, 1930, the settlement officer will be dealing with the law as is in force on that date. The Khan Bahadur, I hope, will agree with me when I say that before the amending Act comes into operation whatever the position under the present law may be there will be a presumption of correctness.

Khan Bahadur Maulvi AZIZUL HAQUE: Is there any section in the present Bill by which rights created prior to the introduction of the present Bill are maintained?

The Hon'ble Sir PROVASH CHUNDER MITTER: It is not necessary and there is nothing in the present Bill which takes away any such right. The Khan Bahadur knows very well, as a lawyer, that unless there be any express provision for taking away these rights, such rights will not be taken away.

Khan Bahadur Maulvi AZIZUL HAQUE: In view of the statement by the Hon'ble Member and also in view of the fact that there is a further amendment to be moved by Maulvi Syed Nausher Ali, I beg leave of the House to withdraw the amendment.

The motion of Khan Bahadur Maulvi Azizul Haque was then, by leave of the Council, withdrawn.

Maulvi SYED NAUSHER ALI: May I submit that there seems to be some mistake about my amendment.

Mr. PRESIDENT: Really there is a mistake and so I am prepared to allow your amendment to be moved at this stage.

Maulvi SYED NAUSHER ALI: My amendment runs thus:

"That in clause 4 (*a*) in clause (*ii*) of the proposed proviso after the words 'has been' the words 'or is,' be inserted."

Sir, after the discussion of the amendment of Khan Bahadur Maulvi Azizul Haque and after the expression of opinion of the Hon'ble Member in charge that it will always be open to the Court to decide whether any particular burgadar.....

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, if the House would allow this motion to be put, we should have no objection to accept it.

The motion "that in clause 4 (*a*) in clause (*ii*) of the proposed proviso after the words "has been" the words "or is" be inserted" was then put and agreed to.

The following motion was called but not moved and therefore deemed to be withdrawn:—

Maulvi KADER BAKSH to move that in clause 4 (*a*) to clause (*ii*) of the proposed proviso, the following shall be added, namely, "after the commencement of the Bengal Tenancy (Amendment) Act, 1928."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh: I beg to move that clause (*ii*) of the proposed proviso to Bill clause 4 (*a*), line 2, after the word "tenants" the words "in a case where the question was directly raised and decided" be inserted.

Sir, I have proposed this amendment to clear up the matter, as suits for barga produce are sometimes indiscriminately registered and decreed as rent suits. If the amendment be accepted, there will be no difficulty in future in this matter.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I beg to oppose this motion. In doing so I do not want to make a speech, but I want to explain that the word "held" is quite sufficient so far as the civil courts are concerned, and the addition which the amendment proposes to make is quite unnecessary.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: Sir, in view of the fact stated by Mr. Mumin, I ask the leave of the House to withdraw my amendment.

The motion was then, by leave of the Council, withdrawn.

The following motions were called but not moved and therefore deemed to be withdrawn:—

Babu NALINIRANJAN SARKER to move that in clause 4 (*a*) at the end of the proposed proviso (*ii*), line 2, the words "in a case where the question has been raised and decided" shall be added.

Babu AMULYA CHANDRA DATTA to move that in clause 4 (*a*) the following be added to the proviso to sub-section (*3*) of section 3 of the Act:—

"(*iii*) he has acquired by custom the rights of a tenant."

Maulvi TAMIZUDDIN KHAN: Sir, I beg to move that after clause (*ii*) of the proposed proviso to clause 4 (*a*) the following shall be added, namely:—

"or

(*iii*) he has been recorded in the record-of-rights as a tenant."

Khan Bahadur MUHAMMAD ABDUL MUMIN: On a point of order, Sir. This is in effect the same thing as has been decided by the House with reference to the latter portion of Khan Bahadur Azizul Haque's amendment.

Mr. PRESIDENT: That is quite so. In fact, they are identical in substance, but the wording is different, and Khan Bahadur Azizul Haque did not press his amendment. I am, therefore, of the opinion that the House should be given an opportunity to pronounce its verdict on the present amendment.

Maulvi TAMIZUDDIN KHAN: Sir, I move this amendment in order to place my views about this matter before the House. We say that in the present amending Bill the rights and privileges of bargadars have been circumscribed to a large extent. In fact, they have been driven into a helpless position. The intention of Government, as was given out by the Hon'ble Member in charge of the Bill, is to settle the law on the subject so that the doors of litigation may be closed to a certain extent. I beg to submit, Sir, that if Government accept the position that those who have been recorded in the record-of-rights as tenants will be recognised as such, then litigation will be stopped to a large extent. And, by thus extending a little the rights of the bargadars we are not going to give them anything

which is unreasonable, because, as everyone knows, the settlement authorities prepare the record-of-rights with a good deal of care and caution. Whenever these documents are produced, the presumption raised is so strong that in almost all cases the presumption is upheld, and the cases are decided on that. Of course, it lies with the court to go against the presumption if there is sufficient evidence to rebut it. There will be a small number of cases only in which the record-of-rights will be proved to be wrong: in ninety-nine cases out of hundred, if not more, the decision will be that the record-of-rights as prepared by the settlement authorities is correct. So, Government will lose nothing by accepting this amendment. On the other hand, if Government are not agreeable to accepting this amendment, the door of litigation will be widely opened, and the poor people who will be bargadars under the new regime will be dragged into courts of law, and, after a course of ruinous litigation, will be ultimately declared as not tenants. Because, under the new law even if there is a record to the effect that a bargadar is a tenant, that record will have very little chance of being accepted in a court of law, as under the new law the settlement authorities will be justified in recording a bargadar as a tenant only if he is a tenant under the new amending law, that is, if he is recognised to be such by a landlord in a document or if he has been previously held to be such in a suit in a court of law. Only in these two cases the bargadar will be a tenant. And if the settlement authorities record him as a tenant without the two aforesaid conditions being fulfilled, after the passing of this amending Act, then the bargadars, even if recorded as tenants, will have no chance of being declared as such. If this small right is given to bargadars, I think no party stands to lose by it.

Moreover, Sir, I see that in the report of the committee which was appointed to consider these questions there was a proposal for inserting a clause like this in the Bill, viz., that those bargadars who have been recorded as tenants in the record-of-rights should be recognised as tenants; but it was not accepted for the reason that in that case, according to the committee, all bargadars will, in fact, have to be recognised as tenants. That shows, Sir, that the intention of the committee was to exclude persons who were recorded as bargadars from the rights of tenants.

Sir, when under the new law this section will be interpreted, the question will surely come up what was the intention of the legislature. Was it the intention of the legislature to allow section 103 being applied in the case of bargadars? I do not know how long it will take to settle this question. Therefore, if we want to settle the law and close the door to litigation, I think the position should be made clear now, and I trust that Government would be pleased to agree to this little extension of the rights of bargadars.

With these few words, Sir, I commend my motion to the acceptance of the House.

Maulvi SYED NAUSHER ALI: Sir, I beg to move that in clause 4 (*a*) in clauses (*i*) and (*ii*) of the proposed proviso to section 3 (*3*) of the Act the following be added at the end of the said proviso, namely—

"(*iii*) he has been or is recorded in a settlement record-of-rights as a tenant."

Sir, my friend Maulvi Tamizuddin Khan has already explained why we want these words to be included. My point before this House is that the object of the definition of a bargadar is to settle the law and to close the door to litigation. And if the record-of-rights is to be treated merely as a piece of evidence, then it will be a prolific source of litigation. These records, as has already been observed, are prepared and, I have no doubt, will be prepared, with due diligence and care. Therefore, I submit that this House should accept the amendment in order to avoid litigation in the future. There is one more point on which I wish to make my submission. I would accept the exposition of the law as given by the Hon'ble Member in charge of the Bill. He has stated that the settlement records prepared up to the time the present amending Act comes into force, will be presumed to be correct in a court of law. My amendment goes a little further, i.e., if in any record-of-rights, whether of the past or of the future, a bargadar is shown as a tenant, he should be accepted and treated as a tenant.

Sir, I do not wish to take up much time of the House, but I would only submit that it was also the view of the Government at one time. I would, therefore, appeal to Government to come forward to help the bargadars by accepting this amendment.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, I heard the Hon'ble Member in charge of the Bill, but I regret very much that I was not at all convinced by the speech as well as the arguments he advanced in support of his request that the amendment be withdrawn. There are two conditions which have been definitely stated in this Bill, under which a bargadar becomes a tenant: either that he has been admitted to be a tenant by the landlord or that he has been held by a civil court to be a tenant. There are cases in which there is absolutely no decision of the revenue authorities which can conclusively prove a bargadar to be a tenant. That the record-of rights is of value in such cases cannot be disputed. This question has not been fully examined. In many cases it is quite likely that there is no decision of the civil courts and then the evidence of the record-of-rights that the bargadar has attained the rights of a tenant will be of no avail.

For my friend to say that it would raise a presumption in favour of the bargadars is to say something which does not exist, because that presumption under the provisions of the Bill itself can never be taken into account by the civil court. The bargadar has to show a decision of the civil court or an admission by the landlord that he is a tenant, otherwise he is altogether out of court. The Honourable Member said that it would be a presumption in favour of the bargadar. I hope he will allow me to say that he is perfectly wrong, though I would very much like that I am mistaken. Further, Sir, we are out to see that litigation is stopped. But, how are you going to stop it? Even if the Hon'ble Member is correct in his statement that in spite of the provision of the Bill the fact that a bargadar is recorded as a tenant would raise a presumption in favour of the bargadar that he is a tenant, the landlord can contest it, and then it will be for the court to take into account this presumption as well as the many facts and circumstances that will be placed by both the parties before it. That means that you compel the bargadar to go into enormous expense. Is it the intention of Government that these tenants should be put to heavy expense? Is it not known to Government that these bargadars are not in a position to go to courts of law? Under these circumstances, it is only fair that Government should accept the amendment as it stands.

4 p.m.

I appeal to the hon'ble members here to try to understand the matter that according to the law as it stands in the amended Bill a record-of-right is absolutely of no consequence. If the Hon'ble Member in charge of the Bill will be pleased to look at it he will find that my contention is correct and a simple statement in the record-of-rights that a bargadar has acquired a tenancy right cannot be taken into account by any court of law for the amending Bill clearly says that nothing but a decision of the civil court that a particular bargadar is a tenant, can make him a tenant. A statement in the record-of-rights is a scrap of paper, and if the Government Member really means that it should be treated as a scrap of paper and not give the bargadar the right of a tenant the Hon'ble Member and the Government are at liberty to do that.

The Hon'ble Sir PROVASH CHUNDER MITTER: With regard to the points that the House discussed a few minutes ago when dealing with Khan Bahadur Azizul Haque's amendment and after hearing my submissions with regard to those points, the House allowed the Khan Bahadur, who was himself satisfied, to withdraw his amendment, I do not want to say much. The points I made are still there, but with regard only to some new points which were raised by Maulvi

Tamizuddin Khan and Maulvi Nausher Ali I propose to deal briefly. I am sorry to note that Maulvi Ekramul Huq has not raised any new point whatsoever and I do not propose to deal with his speech.

One point raised by Maulvi Tamizuddin Khan is this: he says that when the courts will have to deal with the question they will examine the intention of the legislature and if they do so how will they decide? I would remind him and other lawyer members of this House that it is a well-settled principle of law established by the Privy Council in Kamalbashini's case (23.I.A., p. 18) and heaps of other cases that for the purpose of the interpretation of a Statute we can only look to the Statute itself. Even the past history we cannot examine, as the High Court attempted to do in the Kamalbashini's case and the Privy Council promptly overruled it. It is equally well-settled that for the purpose of interpretation of a Statute you cannot even refer to the proceedings of the Council far less into the proceedings of the Select Committee or any of the committee which resulted in the drafting of the Act. Lawyer members will remember that this was clearly laid down in the Privy Council case of Administrator-General vs. Premlal Mullick, 22 I.A., p. 107. So that when the Court will interpret this amending Act it will have before it section 3 (*3*) as amended. It will also have before it section 103 B. Now section 103 B raises a presumption of correctness. It is preceded by certain other sections and section 102 is the section which sets out the particulars which the settlement officers have to record, and one of the particulars which a settlement officer has to record is set out in section 102 (*a*), namely, the name of each tenant. If the settlement officers rightly or wrongly record any particular person as a tenant, then under section 103 B of the Act as amended the presumption of correctness of the entry of tenancy will be raised. Therefore, although there may have been good grounds for doubt on the part of Maulvi Tamizuddin Khan in view of what Sir Naliniranjan Chatterjee's Committee stated, yet in view of the rules of interpretation of Statutes to which I have referred I trust Maulvi Tamizuddin Khan and other lawyer members will feel satisfied, and I hope their apprehension will be removed.

Maulvi Nausher Ali has raised the point that if the clause—so far as I can remember he perhaps said this but if I am not correct, you, Sir, will please permit him to correct me—that if a clause like the one moved by Maulvi Tamizuddin Khan or Maulvi Nausher Ali be not introduced here, then the record itself cannot raise any presumption because that person under the amending law cannot be a tenant. If I am right, and I believe I am right, I would point out to Maulvi Nausher Ali and the members of this House as to whether he is a tenant or not would depend on the state of the law at the moment when the right is recorded. That may happen either before the

amending Act came into force or after the amending Act came into force. If it happened before the amending Act came into force the law would be interpreted by the settlement officers on the law then in force and before the amending Act came into force. Now, what happens in the case I am going to mention? Suppose the right was recorded 3 years ago and in the meantime the amending Act comes into force. Nobody can question the entry in that record because the law was changed subsequently. If 6 years elapse then right is perfected by the Statute of Limitation. On the other hand if somebody questioned the entry before the expiry of 6 years—and that was the point of doubt of Maulvi Nausher Ali—after the amending Act came into operation the rights being recorded under the old Act, the position will obviously be that the rights will be determined under the old Act. If that be the position, I believe, no lawyer will question the correctness of the position I have explained and the person in whose favour the entry is recorded either under the old law or under the new law will be hurt in any way.

Lastly, there is only one point which I would ask this House to consider and that is this. It is a mistake to say that all bargadars are tenants—it is a mistake to say that no bargadars are tenants. It is equally a mistake to say that the man who is called in common language a bargadar is always recorded by the settlement officer as a bargadar. He is not. The settlement officer lays down some tests and according to those tests the settlement officer records that particular person as a bargadar tenant in certain cases. That question is always open to civil courts and will always remain so. The records made before the amending Act came into force will be guided by the law which was in force then and records made by the subsequent amending Act will be guided by the amended law then in operation.

The motion of Maulvi Tamizuddin Khan was then put and a division called for.

Khan Bahadur Maulvi EKRAMUL HUQ: May I draw your attention to the fact, Sir, that Mr. Bijoy Prasad Singh Roy entered the Chamber after the doors were locked?

Mr. PRESIDENT: Is Mr. Singh Roy here? Did you get into the Chamber after the doors were locked?

Mr. BIJOY PRASAD SINGH ROY: Yes, Sir.

Mr. PRESIDENT: In that case you should abstain from voting.

The division was then taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmad, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Ismail, Khan Bahadur Maulvi Muhammad.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Nazimuddin, Mr. Khwaja.
Rahim, Sir Abd-ur-
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray Chaudhuri, Mr. K. G.
Sarker, Rai Sahib Rebati Mohan.
Solaiman, Maulvi Muhammad.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Remes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Bose, Mr. Subhas Chandra.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Rai Harendranath.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Drummond, Mr. J. S.
Dutt, Babu Saral Kumar.
Forrester, Mr. J. Campbell.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hopkyns, Mr. W. S.
Hossain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. P. E.
Khan, Babu Debendra Lal.
Lala, Babu Sareda Kripa.
Maguire, Mr. L. T.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Prevash Chunder.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nundy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Chaudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Nagendra Narayan.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Ray Chaudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

The Ayes being 23 and Noes 72, the following motion was lost:—

"That after clause (*ii*) of the proposed proviso to clause 4 (*a*) the following shall be added, namely:—

'or

(*iii*) *he has been recorded in the record-of-rights* as a tenant.'"

The following motion was then put and lost:—

"That in clause 4 (*a*) in clauses (*i*) and (*ii*) of the proposed proviso to section 3 (*3*) of the Act the following be added at the end of the said proviso, namely:—

'(*iii*) he has been or is recorded in a settlement record-of-rights as a tenant.'"

Babu SURENDRA NATH BISWAS: I beg to move that in clause 4 (*a*) after the proposed proviso to clause (*3*) of section 3 the following be added, namely:—

"Provided also that nothing contained in the record-of-rights prepared before the commencement of the Bengal Tenancy (Amendment) Act, 1928, shall give a cultivator under the system known as 'adhi,' 'barga' or 'bhag' any tenancy-right."

Sir, my intention in moving this amendment is to make the law clear on the point. For these two days we have heard many arguments on the question whether the bargadar should be a tenant..... .....

Khan Bahadur MUHAMMAD ABDUL MUMIN: On a point of order, Sir. I think the mover is not in order in moving his amendment, because the amendment which he now wants to move is in effect the same as amendments Nos. 22 and 32, which you have already held require the sanction of the Government of India.

Mr. PRESIDENT: Yes, you are right, it cannot be moved at this stage.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that after the proposed proviso in clause 3 (*a*) the following be added, namely:—

"Provided further that a raiyat holding land under the utbandi custom shall be deemed to be a tenant for the purposes of this Act."

Members of this House do not probably know what this system is. It is a peculiar system of land-tenure prevalent in the district of Nadia which has got certain restricted rights in the matter of the occupancy incidents. It might be an information to this House that this clause 180 was enacted in the Bengal Tenancy Act, 1885, against the wishes of the Government of Bengal, against the wishes of all those who spoke on behalf of the Government of Bengal, because as the settlement report which is a Government record says "that the disabilities of utbandi raiyats which section 180 of the Tenancy Act has had the practical effect of making permanent were due to the influence of a Member of the Select Committee at Simla who was connected by marriage with one of the most powerful planters of Nadia."

Khan Bahadur MUHAMMAD ABDUL MUMIN: Is the Member in order to discuss the incidents of the utbandi raiyat when he is moving that a raiyat under the utbandi system should be a tenant? His amendment has no concern with the system.

Khan Bahadur Maulvi AZIZUL HAQUE: But I think it is my duty to make these incidents known to this House, for the very simple reason that most of the members of this House, excepting Mr. Mumin and Rai Bahadur Mohendra Nath Gupta, are not at all familiar with them. I doubt even if the Hon'ble Member is very much familiar with it. I was saying that we were still suffering from the legacy of this marriage. The non-occupancy raiyats were much better, but by the Act of 1885 these rights were taken away. About 5 or 6 years back Government came up with a legislation by which powers were given to the courts that a man who is a settled raiyat should have certain rights, but for the non-occupancy raiyats having utbandi no right was given whatsoever. I want to have a declaration from the Government that an utbandi tenant is after all a tenant; he should not be deprived of the other rights under the Bengal Tenancy Act. Probably Government will say that he is a tenant. Then what harm is there if it is made clear? If he is deemed to be a tenant for the purposes of this Act, I do not see any harm in Government declaring that he is a tenant. During the time that the settlement operations were going on in Nadia the landlords of our district combined together and we had for the time being "Nadia Zamindars' Association" and under the auspices of that Association an opinion was put forth that an utbandi tenant was not a tenant at all. This opinion was supported by many lawyer-zamindars also. (A VOICE: Then it is a legal advice?) Yes, it is a legal advice and unfortunately we have got to go by that: lawyers always give half-truths. The position is that the settlement records declare that an utbandi raiyat is not a tenant. The Secretary of State in 1880 wanted that shifting should be ended as far as possible. If this clause is added, while maintaining the present custom of utbandi, the utbandi tenant will be recognised as a tenant pure and simple. Under this utbandi system, unless a tenant cultivate one particular plot of land year to year and for 12 years consecutively he cannot get any occupancy right. Now, what do the landlords do? The landlords do this: for the first two years they remain content, but during the next two years, though the tenant remains as before, the landlords' papers change and they show that a different set of tenants. In this way they have been able to defeat the provisions of the Act. I think I shall be supported by my landlord friends in this Council. I think it is my duty to see that some further rights are given to the tenants. So far as this is concerned, my intention is that we want that the man who holds land under a certain peculiar custom prevalent in a particular district should be a tenant.

Babu JOGINDRA CHANDRA CHAKRAVARTI: The amendment which is now before the House runs thus: "Provided further that a raiyat holding land under the utbandi custom shall be deemed to be a tenant for the purposes of this Act." When I read this amendment, I could not exactly follow what the intention of the amendment was, and therefore I listened with particular care the speech of Khan Bahadur Maulvi Azizul Haque. Now, I find his intention is to make the position of the utbandi raiyat more satisfactory, but that is an object which cannot be achieved by the amendment which he has brought before this House. On the contrary, it seems that it is a contradiction of the term to say that a raiyat holding land under the utbandi custom shall be deemed to be a tenant. An utbandi raiyat is a raiyat under section 180 of the Tenancy Act; and when you look at the definition of the tenant in Chapter II, you will find in section 4 it is laid down that there shall be for the purposes of this Act the following classes of tenants, namely:—

(1) tenure-holders, including under-tenure-holders,

(2) raiyats,

4-30 p.m.

When you turn over to section 180 you will find—

> "Notwithstanding anything in this Act a raiyat who in any part of the country where the custom of utbandi prevails holds land ordinarily let under that custom, etc., etc."

So that the man who holds land under the utbandi system is a raiyat and he being a raiyat must be a tenant under the provisions of the Bengal Tenancy Act. Therefore, I fail to understand how my friend Khan Bahadur Azizul Haque wants to have his object achieved by bringing forward a motion of this character. It seems to me that the language of this motion is contradictory in terms and it offends against the very principle laid down in section 180, namely, where an utbandi raiyat has been declared to be a raiyat and he is therefore a tenant. That being so, I may say that we have every sympathy for these classes of tenants and if it is a fact that some officers have held that they, as a matter of fact, are not tenants that must be absolutely against the law and it is necessary that separate provisions should be introduced for the purpose of improving the status of these classes of raiyats. That would be a matter regarding incidence of utbandi raiyats and that the amendment before us will not necessarily fulfil the purpose for which it has been brought forward. Therefore I oppose this amendment.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I am sorry to oppose the motion put forward by Khan Bahadur Azizul Haque because I can see an element of sympathy of the Khan Bahadur with the utbandi tenants of the Krishnagar district from which he comes and also because generally the Khan Bahadur is so reasonable in this House that it is rather difficult to oppose him. But as has been explained by the previous speaker, Babu Jogindra Chandra Chakravarti, I think the intention of the motion is not very well understood. What really the Khan Bahadur is suffering from or feeling much is the incidence under which the utbandi tenants holding under the utbandi system labour. But this is not the place, nor the method, in which the law should be changed to help them. I can understand his sympathy for the utbandi tenants, but certainly in this case his legal vision has been blurred. What he wants is that Government should declare very definitely that a raiyat holding under the utbandi system is a tenant, but I do not think after the way in which he has put his motion a declaration is necessary from Government because he himself has declared that the raiyat under the utbandi system is a tenant. Therefore no such declaration is necessary. As has been explained by Babu Jogindra Chandra Chakravarti there are two places where this utbandi system has been mentioned, *viz.*, in sections 180 and 180 (*a*) which begins—

> "Notwithstanding anything in this Act a raiyat who in any part of the country where the custom of utbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom."

So whoever cultivates must be to begin with a raiyat. A raiyat is a tenant. Therefore to have any amendment to emphasize the fact that he is a tenant is absolutely unnecessary and superfluous. If he thinks that an utbandi raiyat suffers from any disadvantage, the proper thing for him will be to bring in an amendment to amend section 180A. Further, this has nothing to do with the definition of bargadars. I therefore oppose the amendment.

Rai HARENDRANATH CHAUDHURI: On a point of order. How could this amendment come in the agenda paper? It refers to a portion of the law which is not under amendment. It aims at sections 180(*a*) and 180(*b*) which are not under amendment. How could this amendment be in order at all?

Mr. PRESIDENT: Is it your point that the amendment does not expose sections 180 and 180 (*a*)?

Rai HARENDRANATH CHAUDHURI: Yes.

Mr. PRESIDENT: What I find is that the amending Bill exposes the definition of raiyats and so Khan Bahadur Azizul Haque was perfectly right in giving notice of this amendment because he wanted to emphasize the definition of raiyats under the utbundi system. So I think he was in order.

Khan Bahadur Maulvi AZIZUL HAQUE: If the Government is agreeable to give me facilities for bringing in an amending Bill, I want to withdraw it. But I want a statement from the Hon'ble Member in charge whether I would be able to get facilities from the Revenue Department for bringing in an amendment later on.

Mr. PRESIDENT: You can ask Government for an assurance, to that effect but you cannot make it a condition while asking leave of the House to withdraw your amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: I agree to withdraw on certain conditions.

Mr. PRESIDENT: The withdrawal must be unconditional.

Khan Bahadur Maulvi EKRAMUL HUQ: Is not the President depriving a member of his right of speaking on a particular question when he is on his legs?

Mr. PRESIDENT: Order, Order. That question does not arise as no member was in fact deprived of his right. If the President thinks that a matter has been thoroughly discussed and thrashed out, I think he can do no harm to anybody by putting the question to vote.

The following motion was then put and lost:—

"That after the proposed proviso in clause 3 (*a*) the following be added, namely:—

'Provided further that a raiyat holding land under the utbandi custom shall be deemed to be a tenant for the purposes of this Act.'"

(At 4-40 p.m. Council was adjourned and it reassembled at 4-50 p.m.)

Khan Bahadur Maulvi EKRAMUL HUQ: On a point of order. Is not a member belonging to this side of the House entitled to speak on a particular motion?

Mr. PRESIDENT: How do you arrive at that? I am really surprised at your repeated attempts to interrupt in that fashion.

Khan Bahadur Maulvi EKRAMUL HUQ: According to law may I not speak on a subject.

Mr. PRESIDENT: Yes, but not in season and out of season or only to repeat the same arguments.

Khan Bahadur Maulvi EKRAMUL HUQ: Only two persons spoke on the last subject.

Mr. PRESIDENT: Can you not leave that to me.

The following amendments were called but not moved and therefore deemed to be withdrawn:—

Kazi EMDADUL HOQUE to move that after clause 4 (*b*) the following be inserted, namely:—

"at the end of clause (*8*) the following shall be added, namely:—

"and includes a tenure held by a person continuously for a period of twelve years whether before or after or partly before or partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928.

Explanation.—A person shall be deemed for the purpose of this clause to have held a tenure continuously for a period of twelve years when the periods for which his predecessors in interest and himself have successively held together amount to twelve years."

Babu BEJOY KRISHNA BOSE to move that in sub-clause (*c*) of clause 4 the words "or an under-raiyat" be omitted.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 4 (*h*) in the definition of "complete usufructuary mortgage" in line 7 after the words "interest thereon" the words "or all interest thereon only and not the loan" shall be inserted.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I beg to move that in clause 4 (*h*) the proposed clause (20) shall be omitted. I would first of all read clause (20) and that is this—

"The expression 'Cost of transmission' includes the cost of establishment and other incidental charges incurred by the registration offices, collectorates and civil courts for receiving, keeping and transmitting the fees or other monies with regard to which the expression is used."

Members of this House have perhaps noted that this cost of transmission means cost of transmitting the notice to the landlord when there is a registration of a document, an instrument of transfer, in the registration office. Originally in the Select Committee of 1926 this clause 20 was not in the Bill as settled by the Select Committee. But this has been added now by a Special Committee which was appointed for the purpose of examining the Select Committee Bill. We find at one place of the report of this Select Committee that one of the results of making occupancy right transferable and of introducing the provisions that have been introduced for the purpose of paying the landlord's fees and so on would be this—They say—

> "We are afraid that there will be a large number of transactions in some of which quite large sums will be involved, and it will be necessary to increase the Collector's staff and to provide strong rooms in the sub-registrars' offices for the safeguarding of the fees before they can be sent through the post office to the Collector. We however, suggest that the fees for transmission should be on a sufficient scale to cover all the new expenditure involved."

It is really a very high figure that this cost is likely to attain to, and it is not possible for us now to imagine as to what this cost of transmission will be; but I object on principle that all these costs which may be necessary for the purpose of erecting strong rooms and increasing the Collectors' staff for safeguarding of the fees and so on and so forth and also the cost that will be necessary in the Civil Courts should be realised from the persons who are parties to the transaction, namely, instrument of sale. That will mean that in addition to the salami paid to the zamindars there is a provision for an additional salami to be paid to the Government for the purpose of meeting those charges. I do not know what the amount of the cost will be. What I apprehend is that it may be perhaps necessary for the Government to have a schedule of fees just as they have a schedule of court-fees now which will apply to the cases of instrument of transfers, when they are registered. The fees will have to be paid according to this schedule. My objection to this cost of transmission is that we find this includes establishment cost and other necessary charges and so on. It is absolutely improper that the parties to the transfers should be saddled with additional cost. We must bear in mind that parties will have to bear necessarily the cost of transmission through the post office and the cost of serving all notices. These are costs which are incidental costs. But in addition to all that, if it is laid down that all other costs on account of these charges should be paid by the parties, I submit it would be very improper and I hope this House will accept this principle and will oppose the introduction of clause 20 in this connection.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 63-67.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 4 (*h*) in the proposed clause (*20*) of section 3 of the Act for the word "includes" the words "shall not include" be substituted.

Babu Jogindra Chandra Chakravarti says that practically the cost of transmission so far as the cost of establishment and other incidental charges incurred by registration offices and Collectorates for receiving and transmitting the fees is concerned, should be paid by Government. That will be the direct effect of Babu Jogindra Chandra Chakravarti's amendment. My amendment is this, that it should not be paid by Government nor by the tenant but by the landlord and with a view to do that I have given notice of an amendment of a corresponding clause, viz., amendment No. 763, to the effect that it shall be lawful for the registration offices to deduct out of the money deposited the cost, before transmitting the money to the landlord. It may be seen that the landlord is given a present of 25 per cent. of purchase value of all lands in the shape of salami and that the tenants have to pay it. Under the present section the tenant must also pay in addition the cost of transmission. That is certainly unfair and I think it will be realised by everyone. The question reduces itself to one whether the landlord should pay or the Government should pay. Surely, Sir, I do not see why Government should pay. As I understand the estimate is that between Rs. 160 lakhs to Rs. 4 crores should be given to the landlord in the whole of Bengal. The minimum will be about Rs. 1½ crores and the maximum will be about Rs. 4 crores. In order to transact the business connected with the sending of the amount of about Rs. 2 to 4 crores it will require certain amount of incidental charges. If the landlords are to be benefited to the extent of Rs. 2 to 4 crores I strongly oppose the idea that the impoverished provincial finances should be made to pay the cost. Therefore I submit that my amendment is much better than that of Babu Jogindra Chandra Chakravarti who wants that Government should pay. I want that the landlord should pay out of his own share.

Khan Bahadur Maulvi EKRAMUL HUQ: I beg to move that in clause 4 (*h*) in proposed clause (*20*) line 2, for the word "includes" the words "does not include" shall be substituted.

Sir, I do not want to inflict a speech in proposing this motion of mine. I need not speak about the 25 per cent. salami on which my friend Khan Bahadur Maulvi Azizul Haque has spoken. To my mind only in cases of tenure-holders a small salami of a rupee or two might be given. But I never contemplate for a moment that the

House could consent to any salami being given for the purpose of transfer and by this Bill Government not only proposes to give salami but proposes also that the tenants should also pay for the upkeep of officers who are to take care and transmit the salami received by the landlord. This is simply preposterous and hence my motion.

Srijut NAGENDRA NATH SEN: Sir, I support the amendment moved by Babu Jogindra Chandra Chakravarti and oppose the amendments which have been moved by Khan Bahadur Maulvi Azizul Haque and Khan Bahadur Maulvi Ekramul Huq. It is in the knowledge of the honourable members of this House that by an amendment to the Stamp Act, stamp duties have been raised by 50 per cent., and these duties were raised in the year 1922. One fine morning we woke up and found that by a notification the Inspector-General of Registration had increased the fees for registration. In fact the fees were increased by 100 per cent. and absolutely no reasons therefor were given. If the party has to pay enormous sums in the shape of registration fees, if he has to pay stamp duty over and above what he used to pay formerly, there is absolutely no reason why the extra charges which are to be incurred to meet the cost of transmission should be levied from him as provided in clause 20 of the amending Bill. I do not find, Sir, any reason why the increased stamp duty and the increased registration fee should not cover this cost. Moreover, Government have the power of regulating the fees and of executing the same by an administrative order so that it may not have any mischievous or disastrous effect on the people. There is no limit to Government's hunger and thirst for revenue. Government do not consult anybody when they enhance the fees in any matter whether it be in the Registration Department or in any other department. Therefore, there is no reason why Government should be given unlimited power to make any set of rules regulating the fees as regards the cost of transmission and it will be opposed by all members of this House.

Then, as regards the amendment of Khan Bahadur Maulvi Azizul Haque and Khan Bahadur Maulvi Ekramul Huq, if the cost of the stamp duty and the registration fees are to meet the extra cost of necessitated by the conferment of the power of transfer of occupancy rights, there is no reason why the landlord should be made to pay the cost of transmission and it is also not known whether the landlords' fees will be 2 per cent. or 25 per cent., or 50 per cent. This is a matter on which no definite understanding has been arrived at. Therefore, in order to make everything sure and precise it is necessary that there should be no uncertainty and that there should be no unlimited powers in the hands of Government; and then, when the consideration is very small, the landlords' fee will be very small and if the landlord is forced to meet the cost of transmission, it will be an

act of injustice to him. So, I oppose the motions moved by Khan Bahadur Maulvi Azizul Haque and Khan Bahadur Maulvi Ekramul Huq and support the motion moved by Babu Jogindra Chandra Chakravarti.

Rai MAHENDRA NATH GUPTA BAHADUR: I beg to oppose all the motions now before the House. The expression "cost of transmission" appears at several places of the Bill with reference to landlord's fees, and it has been considered convenient to have a definition of it, so that it may not be necessary to repeat in every case what is meant.

The plan of the Bill is that the landlord's transfer fee would be paid at the registry office and transmitted to the landlord by the Collector. It is estimated—it is difficult to estimate though—that the total amount will be about Rs. 50 lakhs every year. The House may be reminded here that the proposal in the Government Bill of 1925 was that the realization of this amount should be left to the landlords just as they realise arrears of rent. But the plan has been changed and Government have agreed to do this work for the parties, provided the necessary cost of transmission, including charges on account of establishment and contingencies, were paid. The handling of this large amount of money in the different offices and keeping the accounts will require some addition to the present establishment and also additional provision for contingencies. All these costs are what are intended to be covered by this definition.

The quesion whether these costs or any portion of them should be borne by the tenant or by the landlord is quite distinct, and really does not arise in connection with the definition of the term. It would be dealt with in connection with the various amendments which have been tabled on the point (for example, amendment No. 763). But for the definiiton it is unnecessary.

One point must be explained. I believe the House will not agree that the cost to be incurred by Government for doing this work would be borne from the public purse. Whatever may be the ultimate decision of this Council as to whether the cost of transmission should be apportioned amongst the landlord and tenant, and how it should be done, or whether it should be borne entirely by one or the other party; it cannot be left to rules only to explain what this cost means and includes. We must have a clear definition. If we did not do so, it is doubtful whether any portion of it can be charged on the landlord, as, if I am right, some of the hon'ble members have wished in certain later amendments.

A definition is necessary and as I have said the question as to who will bear the cost or any part of it is distinct, and it is irrelevant to introduce it now.

Babu Jogindra Chandra Chakravarti, if I have understood him aright, suggests that a schedule of fees would be the proper thing. This is exactly, I may explain, what is intended. Wherever the expression " cost of transmission " has been used in the Bill, the word " prescribed " has been added to it, and the word " prescribed " means prescribed by rules under this Act. I hope that on this explanation the Council will agree to reject these amendments.

The Hon'ble Sir PROVASH CHUNDER MITTER: At this stage, Sir, I only desire to make one point clear; and that point is that Government will on no account agree to bear these costs out of the public purse. If that be the intention, before the House votes on this question, it should take that fact into consideration very seriously. Government would have to get certain receipts and make certain payments: and all that comes up to the House at the budget time every year. On the question whether it should be paid by the landlord or by the tenant, Government would be perfectly willing to be guided by the vote of the Council. But if Government be defeated on this point and be asked to pay the whole cost out of the public purse, Government will never agree to it.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, as the Rai Bahadur has explained, the question does not arise under this clause. The difficulty is that in later sections you have provided that the cost of transmission is payable by the tenant and along with it you have added " prescribed cost of transmission " throughout in all the sections of the Act. Therefore we have no other alternative but to bring it up now.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, the proper course is, with your leave, to move amendments on these sections, and so far as I am aware, amendments have been proposed on almost all the sections.

Khan Bahadur Maulvi AZIZUL HAQUE: Will you, Sir, allow us to move amendments, at short notice, to the later sections?

Mr. PRESIDENT: That question does not arise at this stage. You can raise the question at the right moment.

The motion of Babu Jogindra Chandra Chakravarti was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.

Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Bose, Babu Bejay Krishna.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, Rai Harendranath.
Choudhury, Maulvi Khorshed Alam.
Das Gupta, Dr. J. M.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Himatsingka, Babu Prabhu Dayal.
Huq, Mr. A. K. Fazl-ul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
Ismail, Khan Bahadur Maulvi Muhammad.
Karim, Maulvi Abdul.
Khan, Babu Debendra Lal.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjee, Srijut Taraknath.
Naskar, Babu Hem Chandra.
Nazimuddin, Mr. Khwaja.
Pal Choudhuri, Mr. Ranjit.
Rahim, Sir Abd-ur.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray Chaudhuri, Mr. K. C.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sarkar, Babu Naliniranjan.
Sarker, Rai Sahib Rebati Mohan.
Sen, Srijut Nagendra Nath.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Nafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Dash, Mr. A. J.
Dowding, Mr. T. W.
Drummond, Mr. J. G.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Goenka, Rai Bahadur Badridas.
Gupta, Rai Bahadur Mahendra Nath.
Hopkyns, Mr. W. S.
Hussain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. P. E.
Khan, Mr. Razaur Rahman.
Lala, Babu Sareda Kripa.
Luke, Mr. N. R.
Marr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Pravash Chunder.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Parrett, Mr. P.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F.
Raikat, Mr. Prosanna Deb.
Ray, Maharaja Jogindra Nath.
Reid, Mr. R. N.
Ray, Mr. Bijoy Prasad Singh.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 59 and the Noes 45 the following motion was carried:—

"That in clause 4 (*h*) the proposed clause (*20*) shall be omitted."

The following motions were not put as they were covered by the foregoing decision of the Council:—

"That in clause 4 (*h*) in the proposed clause (*20*) of section 3 of the Act for the word 'includes' the words 'shall not include' be substituted."

"That in clause 4 (*h*) in proposed clause (*20*) line 2, for the word 'includes' the words 'does not include' shall be substituted."

Mr. SYED MD. ATIQULLAH: Before I move my amendment, Sir, I should like to make a submission. This motion is consequential to motion No. 275, which requires the previous sanction of the Governor-General. That sanction has not yet been obtained, and I submit that the consideration of this motion should be postponed for the present and taken up when the necessary sanction comes.

Mr. PRESIDENT: I have no objection.

The following motion therefore did not come up:—

Mr. SYED MD. ATIQULLAH to move that at the end of clause 4 (*h*) the following shall be added, namely:—

"(*21*) A *bona fide* agriculturist" means "an actual tiller of the soil."

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I beg to move that the word "prescribed" in all the clauses wherever it occurs in the Bill in conjunction with the words "cost of transmission" shall be omitted.

This is a consequential amendment which arises in consequence of the fact that amendment No. 63 has been accepted by the House. Sir, you will find later on, in several sections of the Act, that the expression "prescribed cost of transmission" has been used, and, therefore, it becomes necessary, now that amendment No. 63 has been carried, to see that the word "prescribed" is omitted and that the expression "cost of transmission" only remains as hitherto, and as was accepted by the Committee in 1926.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, if the whole thing goes out, it is difficult to understand how the question raised in this amendment arises at all. It is proposed to omit the word "prescribed" in all the clauses wherever it occurs. However, as Babu Jogindra Chandra Chakravarti in his previous speech has already said that the most convenient arrangement would be to lay down a scale of costs, this is exactly what is meant by the word "prescribed" in all the sections in which the expression "cost of transmission"

ccurs. "Prescribed," as I have already said, means prescribed les. And unless certain rules are framed laying down the scale of es, it is difficult to see how this cost can be conveniently realised. herwise, great inconvenience will be caused to all concerned. I bmit the word "prescribed" is necessary and should remain. nd I would particularly insist that it should remain, because of hat the House has just carried, viz., the omission of the definition "cost of transmission." The whole thing will now have to be escribed by rules, and this is absolutely necessary.

The motion of Babu Jogindra Chandra Chakravarti was then, by ave of the Council, withdrawn.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, I could not hear u when you put the motion for withdrawal before the House. I nted to oppose the withdrawal of the motion.

Mr. PRESIDENT: I was loud enough for all to hear.

Clause 5.

Babu AMARENDRA NATH GHOSE moved that in clause 5 after e words "servants or labourers" the words "or by bargadar, hiars or bhagdars," be added.

He spoke in Bengali; the English translation of which is as lows:—

"Mr. President, Sir, the definition of a raiyat in the present Bill given as follows:—

"Raiyat means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by servants or labourers, or with the aid of partners, and includes also the successor-in-interest of persons who have acquired such a right."

want to add "Bargadar" also is one of the ways with which a iyat will be able to cultivate his land. I think the Government ld that the labourers and bargadars are the same hence the word rgadar is unnecessary to add to the section but, Sir, as the proviso the section 3 clause (2) has been accepted by this House the status a bargadar in some cases has become a little different than a bourer. This is why I want to add this word "bargadar." If the on'ble Member in charge of the Bill means to say that by this nission he wants to exclude a man from category of a raiyat who ltivates his land by bargadar then I strongly object to it and press

for my amendment with all the emphasis that I can command. The status of a bargadar has been discussed in this House for the last two days and it has been decided more than once that bargadar is not a tenant but a better class of labourer. It is needless to repeat again in the House the arguments adduced by me and by my other friends.

The scope of the section is very wide. A man has been allowed to get the privileges of a raiyat under this Act under amendment by cultivating his land by a partner, labourer, paid servant, but in case of a bargadar, I do not know, why an objection will be raised. I think it is not at all proper to encroach upon the valuable time of the House on this simple matter and it is hoped that the House will accept it without any controversy."

Khan Bahadur MUHAMMAD ABDUL MUMIN: I oppose this motion. The intention of the mover is that bargadars and bhagidars should also come under the same category as servants and labourers. For the last two days we have been discussing on the floor of this House whether bargadars and bhagidars are or are not tenants, and in spite of the enormous opposition that the poor bargadars have met with, in this House it has been decided with the support of all reasonable people in this House that even if all bargadars may not be tenants yet there are at least some classes of bargadars who are admittedly tenants and not servants or labourers. The result of the amendment proposed by the mover will be that even where land is cultivated by bargadars and bhagidars it will be considered their own cultivation by people who are not tenants but labourers and servants. There are many High Court rulings on this point and, Sir, I may be allowed to refer to one of them, namely, Secretary of State vs. Gobinda Prasad, 21, Calcutta Weekly Notes, in which it was definitely held.....

Babu SURENDRA NATH BISWAS: Sir, are we to be guided by High Court rulings in this legislature?

Mr. PRESIDENT: You may not desire to be guided by High Court rulings but it will be very interesting to hear them.

Khan Bahadur MUHAMMAD ABDUL MUMIN: The member does not want to be guided by any other thing but by his own sense, but other members have certainly a right to try to infuse some sense in him. I was just going to refer to the case: Secretary of State vs. Gobinda Prasad, in which it was definitely laid down that bargadars and bhagchasis, though they may not be tenants, are certainly not labourers or servants. It is, Sir, too late in the day now to claim

that bargadars and bhagchasis are servants and labourers and their cultivation is not the same as the cultivation by tenants. I, therefore, very strongly oppose this motion and hope that every member of this House will do so.

Babu AKHIL CHANDRA DATTA: Mr. Mumin has opposed this motion on the ground that if it is carried the result will be that bargadars will be placed in the same category with labourers and servants. He is absolutely mistaken in his interpretation of this amendment. If this motion is carried it only comes to this that the raiyat should not cease to be a raiyat if he cultivates his land by bargadars or by other members of his family. The question whether this will reduce the bargadars to the position of servants or labourers does not arise at all. Mr. Mumin says that some bargadars are tenants. Well, if the bargadar is a tenant, and he will be an under-raiyat, under the raiyat. The status of bargadars is not at all involved on this motion. I am anxious to convince Mr. Mumin that if this motion is carried the status of bargadar will not be affected in the least because if he be a tenant he will be an under-raiyat, if he is not a tenant then he is a labourer. So that the status of a bargadar remained absolutely untouched by the present amendment. Mr. Mumin is wrong in his assumption that if this motion is carried bargadars will not be tenants. The intention of the mover is, I take it, to make the position of raiyats very clear. I think it is admitted on all hands that the raiyat if he cannot cultivate his own land himself does it by an under-raiyat. Is there anybody in this House who wants to deprive the raiyat of his right of having his land cultivated by under-raiyats? If not, certainly there is nothing in this motion to take exception to.

Babu BEJOY KRISHNA BOSE: My esteemed friend Mr. Mumin got up and delivered what he thought a factious speech. He said that the effect of this amendment will be that bargadars will be classed as servants and labourers. I thought that my esteemed friend knew a bit of English. Sir, the clauses are connected by the word "or." Now, what is the meaning of a raiyat? A raiyat means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by partners. Suppose the mover put the words "or by bargadars" after the word "himself." Then, according to the logic of my friend, Mr. Mumin, it will mean this; he himself is a bargadar; because it is after the word "servants or labourers," therefore the bargadar is a servant or labourer! If it was put after the word "partners" all bargadars and bhagdars would become partners! I fail to understand the logic of it, Sir. It was only a vote-catching speech and nothing else. It only intends to amplify what is the meaning of this clause: A raiyat

s a person who primarily holds land for cultivation by himself or by artners or by servants or by bhagchasis and so forth; it does not nean that bargadars are lumped together with "servants or abourers." A raiyat does not cease to be a raiyat because he mploys bargadars to till his land.

Rai HARENDRANATH CHAUDHURI: Sir, some people "rush n where angels fear to tread" and some people are presumptuous nough to try to put sense into other people's brains when they are ot sure whether they have sense enough to interpret a judgment of ourt. The very ruling which Khan Bahadur Mumin has quoted does ot support him. All that the ruling given in Secretary of State vs. Iobinda Prasad says is that bhagchasis may or may not be tenants nd therefore my friend Babu Akhil Chandra Datta explained things uite correctly when he said that in cases where bhagchasi under-aiyats are tenants they are in the position of an under-raiyat and in ases where they are not tenants they are in the position of servants r labourers. Sir, that interpretation was quite correct. The ruling uoted by Mr. Mumin does not support his own case, that is, it does ot say that in such a case as is contemplated by the amendment the hagchasis will at once become labourers.

Khan Bahadur MUHAMMAD ABDUL MUMIN: On a point of personal explanation, Sir. I never said that the ruling said that bhagchasis become labourers and not tenants. I simply said that ven there it was held by the High Court that bhagchasis may or may ot be tenants but certainly they are not serfs or servants. Bhag-hasis may or may not be tenants, but they are not hired labourers, nd this is perfectly clear to my friend, Rai Harendra Nath Chaudhuri.

Rai HARENDRANATH CHAUDHURI: I still persist in saying that Mr. Mumin has misread this ruling. Bhagchasis may or may not be tenants; if they are tenants, Babu Akhil Chandra Datta's argument stands good and if they are not tenants, they must be either servants or labourers. The Bengal Tenancy Act does not contemplate a tenant-at-will and I would remind him in this connection of a judgment of Sir Lawrence Jenkins. Therefore I say, Sir, that a tenant must either be of a class specified in section 5 or be a labourer, and Khan Bahadur's fears that the amendment seeks to introduce an innovation are altogether groundless.

Khan Bahadur Maulvi AZIZUL HAQUE: Some of us on this side of the House have been speaking a few words on behalf of the bargadars and for the last two days our attitude has been definitely clear. I beg to oppose this amendment on the ground that it is against the very principles for which these different definitions have been enacted. Will my friend kindly say as to what is the purport of the

definition of a raiyat? A raiyat is primarily a person who acquires land for the purpose of cultivating it by himself, by members of his family or by servants. If this clause is added it will mean that a raiyat is also a man who acquires land for the purpose of cultivation by bargadars also. That is a new departure from the principles of legislation in this country, Sir. The principle is that the actual tiller of the soil must be given the rights of a tenant. I am not arguing on the supposition as to what should be the proper definition of a raiyat, but I say that the whole tendency of tenancy legislation in this country right from the year 1859 up till now is to give the furthest rights as far as possible to the man who is the actual cultivator of the soil. If this amendment is carried, and this addition is made in the Bill, it will be a new departure and it will mean that the raiyat is also the man who gets or acquires land for the purpose of cultivation not by himself but by others. That is not the principle. He may be a tenure-holder or anybody else. Quite apart from the discussion of the present question as to whether by addition of this clause the bargadars become a tenant or not, I say that the entire tendency of the legislation in the past has been to give the rights of a raiyat to the man who actually tills the soil. I do not know much English nor do I pretend to have more knowledge of it, Sir, than is possessed by the ordinary man; but I do say that the intention all along has been that at its inception a raiyat should hold land for the purpose of cultivation by himself and once you make the position of a middle man the same as that of a raiyat you are practically nullifying the entire purpose for which this Bill is undertaken.

Mr. A. K. FAZL-UL HUQ: Sir, I oppose the amendment because I recognise in it another sinister attempt to curtail the rights of bargadars. We have had enough of this since yesterday and I think what little has been left of their rights is going to be taken away from them to-day. My friend Mr. Mumin with his defective and imperfect knowledge of English has been able to explain to the House that if this amendment is carried, it will practically reduce the bargadars to the position of labourers and servants.

5-45 p.m.

In spite of the word "or" and in spite of the words that may occur in the section, the meaning of the word "tenant" as pointed out by Khan Bahadur Azizul Haque must have been clear to every member of the House. To say that a man who is called a bargadar should also be in the same category as servants or hired labourers is not only monstrous but absolutely absurd. I therefore think that the matter is so very important that not a single member in this House who has interest in the bargadars should support this amendment.

Mr. SARAT C. BASU: The question is whether bargadars should be joined along with the persons by whom a raiyat gets his land cultivated. Now what is a barga? Up till now we have not found any definition of it. We know that cultivation is made not only through sub-tenants but servants and hired labourers or with the aid of partners. If a man enters into a contract with another man to aid him, he becomes a partner, and we know the value of partnership. In cultivating the land, the raiyat not only cultivates through his servants, relations or members of his family but he can enter into a partnership with others to make that cultivation. Such a partner can be called a bargadar; a bargadar really means a person with whom the produce of the land is shared. I think this addition of the word "bargadar" after the word "labourer" will not affect anyone and I hope the House will agree with me in this view and will, I trust, accept the amendment.

Sir ABD-UR-RAHIM: I have no hesitation in opposing this amendment. Since yesterday we have been violating some of the most important and fundamental principles of legislation. So far as these poor bargadars are concerned we are putting all sorts of difficulties in their way, we have deprived them of the privileges of the Evidence Act, we have taken away a good portion of their rights and this is another attempt in continuation of that policy. If bargadars under the present Act can become tenants, they may, as tenants, acquire raiyati rights. If you put them side by side with servants or labourers, one implication will be that he has no right in the land but comes under the same category as servants and labourers: If a bargadar is a tenant, he finds no place here. A tenant stands on the same footing as the raiyat. I say it would be bad policy to reduce the status of those bargadars who really have an interest in the land.

Mr. F. A. SACHSE: I am sorry that we are again on the subject of the status of bargadars in connection with this amendment. It has come in an unfortunate place in the Bill. As we are all aware, the chief object of the amending Act which has been under consideration for the last 14 years is to do something for the under-raiyats. It is on account of the under-raiyats that I strongly oppose this amendment. In 1885 the raiyats were given all valuable rights in the land against the strong opposition of the landlords: it is time that some small share of these rights is passed on to the sub-lessees of those raiyats.

Though there may be ten or more tenure-holders in any piece of land, there can be one raiyat only: under the raiyat there can be two or more under-raiyats: only one man in the chain has any substantial rights and that is the man who happened to be the raiyat in

1885. All the rest are tenants-at-will; though the expression is not used in the Act, this is what they really are. It was the High Court that said "once a raiyat, always a raiyat.". Whether this was the real intention of the legislators who passed the Act in 1885 is doubtful. Hence many different suggestions have been made for passing on to the under-raiyats some of the rights which the raiyats obtained in 1885. It was proposed that the raiyats who ceased to cultivate themselves the greater portion of their land should be converted into tenure-holders. All such proposals were found impracticable, and Sir John Kerr"s Committee as an alternative proposed that all under-raiyats should be given the right of occupancy. That proposal was strongly objected to by the zamindars. (A VOICE: Question.) The Committee then modified their proposal and said that under-raiyats should have full occupancy rights against the immediate landlord but not against the superior landlord. Then this proposal—moderate as it was—was rejected by the Select Committee. If you carry this amendment, it will deprive the majority of under-raiyats of any protection at all. We have in section 48 three classes of under-raiyats. There is one provision only in favour of the third and lowest class and that is section 48 C (Explanation) which says: "In this section and in section 48 E cultivation by hired servants does not include cultivation under the system generally known as "adhi," "barga" or "bhag" by persons who provide their own cattle and plough." If this amendment is carried, the explanation to section 48 C may have to be omitted from the Bill later on, and every raiyat, every tenure-holder, every mahajan will be able to turn out his under-raiyats and substitute bargadars. It would be entirely against the promise of the Permanent Settlement and the promise of the Government made in the communiqué. The proposals about under-raiyats in this Bill are so moderate that I do not see how this House can in the interests of common justice reduce them further.

Maulvi TAMIZUDDIN KHAN: There has been a good deal of confusion of ideas over this amendment. The question is what is the purpose of the tenancy? The real question is how a raiyat is to be differentiated from a tenure-holder. A tenure-holder is a person who acquires land for the purpose of letting it out to under-tenants and the raiyat is a person who acquires land for certain other purposes. If it is added that a raiyat should be a person who acquires land for the purpose of cultivating it by bargadars, that will include persons who take land for the purpose of subletting it to tenant. Therefore, it will be difficult to ascertain whether he is a raiyat or a tenure-holder, because the man who takes land with the primary object of letting it out to under-tenants or to bargadars who are in some cases at least tenants is no longer a raiyat.

There is a real difference between the two. Babu Akhil Chandra Datta argued that certainly a raiyat can sublet his land to under-raiyats: nobody disputes that. It will depends upon the original purposes of the tenancy. Therefore, I have no hesitation in opposing the amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: In dealing with this amendment I will first of all refer to the speech of Sir Abd-ur-Rahim. He has said that we must not ignore one of the fundamental principles of legislation, namely, maintaining the existing rights as far as possible. I put this simple question to the members of this House as to whether it is a fact or not that the raiyats in this country do as a matter of fact let out their lands on adhi system or always cultivate the lands themselves. Would it be just and proper to say that for a raiyat to have his lands cultivated by adhiars is inconsistent with the position of raiyats? Khan Bahadur Azizul Haque has said that we must not ignore the principle of the Tenancy Act that the raiyat must be the tiller of the soil. The very definition of the raiyat as given in the Tenancy Act shows that it is not meant that the man should actually go to the land and cultivate it himself. The option is given in the Act that either he may cultivate it with his own hands or by the employment of labourers, and the system of the employment of adhiars prevails in the whole of Bengal. (A VOICE: Question, Question.) In this particular matter, it is said there is an attempt to take away the rights from the bargadars. There is absolutely no attempt made, because as Babu Akhil Chándra Datta has already pointed out, if the bargadar is a tenant already, he becomes merely an under-raiyat. That being so, the position of the raiyat remains all the same and that of the bargadar an under-raiyat. I would like to mention one point here. There is at present a necessity for introducing amendments of this character to the definition of raiyat. If my information is correct, what the settlement officer does is to go to the locality and enquire as to whether a particular land is in the khas possession of a particular person or whether the land is being cultivated through adhiars. If he finds that he employs adhiars, the settlement officer records the raiyat as a tenure-holder. (A VOICE: That is not true.) I am glad to hear that. Well, Sir, if that is not true, I do not see what is the apprehension which is in the minds of Khan Bahadur Maulvi Abdul Mumin or of Mr. Sachse, because the proposal is to make the point more clear, because the raiyat has the option of cultivating the land by his own hand or by employing hired labourer or servants or by engaging bargadars. There is no sinster motive behind this, there is no attempt to take away the right that bargadars have been exercising, but it is merely for the purpose of preserving certain rights which the raiyats are exercising now that the amendment is suggested and there is no reason why these rights should not be preserved.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, I must emphatically and strongly oppose the amendment and I must say that I do not agree with Khan Bahadur Abdul Mumin and other members who said that the amendment would place the bargadars, adhiars and bhagdars in the category of servants and labourers. In fact the so-called well-wishers of the country have already succeeded by their united efforts to bring down the tillers of the soil to the position of helots in the country and this is another attempt to perpetuate what they have done. Here, by this amendment they again want clearly to state that bargadars, adhiars and bhagdars can on no account and under no circumstances have any right. That being their attitude, it is quite certain that they should bring forward propositions like this before the House and by the weight of their numbers and of their influence carry them. I wish, Sir, they will carry this amendment and innumerable others of this nature so that the world at large may know what they were out for and what they are now doing.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I am sorry to find that some element of heat has been imported into the discussion of this question. I am not sure whether the weather is responsible for it, but on a question like this I venture to think that we should try to discuss the matter in a cool atmosphere with more of light and less of heat.

I should like to draw the attention of the House to the existing definition. The existing definition is that a "raiyat means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners and includes also the successors-in-interest of persons who have acquired such a right." Now, let us suppose that a man started holding a land 50 years ago and the rent has varied during the period. If he primarily started holding the land for that purpose, his right is certainly there. I venture to point out to Sir Abd-ur-Rahim how by accepting our amendment in the Bill we are going to trench upon existing rights. With the utmost respect to Sir Abd-ur-Rahim and Babu Jogindra Chandra Chakravarti, I would say that if you accept the proposed amendment No. 70, you will in some cases interfere with existing rights. But, apart from all that, we are legislating in an amending Act when there are provisions which will make it possible for occupancy rights to be transferred on a large scale. I hope that Babu Jogindra Chandra Chakravarti and Babu Amarendra Nath Ghosh and other friends will not lose sight of that aspect of the question. When you are going to have transfers on a large scale, if these words be introduced, it may lead to a very difficult position. If, in any part of the country, there are unscrupulous capitalists, it may not be difficult for them to buy plot after plot and to get these plots

cultivated by bargadars, adhiars and bhagdars. I am sure my friends to the right who have undoubtedly the larger interests of the country before them do not desire such a state of things. If there is that danger no doubt provision should be made to remedy that. But will it not be better to go to the root causes? What is the great advantage of introducing these words? We could very well go on without the addition now proposed—from 1885 to 1928, if that be so where is the great danger that calls for Amarendra Babu's amendment. You are going to have a new state of things and under the new dispensation that we are proposing there will be free transfers of occupancy rights. Now, if there be free transfer, what is there to prevent the cultivators from being turned into landless labourers if Amarendra Babu's amendment be accepted?

Rai HARENDRANATH CHAUDHURI: Nothing. But you should have thought of it when proposing the transfer of occupancy right.

The Hon'ble Sir PROVASH CHUNDER MITTER: We certainly should think of it. I may say that my friend Rai Harendranath Chaudhuri is a party to that. However, I won't enter into these debatable points. Is there any doubt that there is a great deal of feeling amongst important sections of people that this may affect the position of the cultivators? Now, Sir, I shall draw the attention of the House to section 48 C. The proviso to that section should be read with clause (*c*) or (*d*). Then clause (2) of the proviso says that if the under-raiyat has "been in possession of his land and a homestead thereon for a continuous period of 20 years whether before or after or partly before the commencement of the Bengal Tenancy (Amendment) Act, 1928." Thereafter we have—

> (*ii*) unless the landlord has satisfied the court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid of partners.

Then, I would draw attention to the Explanation which says:—

> In this section and in section 48E cultivation by hired servants does not include cultivation under the system generally known as "adhi," "barga" or "bhag" by persons who provide their own cattle and plough.

Some members of the House who are familiar with the history of this question—and notably my respected friend, Rai Harendranath Chaudhuri, will remember that another respected friend, Babu Nirmal Chandra Chunder, was instrumental in a certain important Committee in making an effort to improve the position of the under-raiyat. As a

result of that, and as a result of the compromise effected by Sir Naliniranjan Chatterjee's Committee, this provision has been inserted in the Government Bill. Now, the only reason of my drawing attention to this point is that if at this stage you introduce this amendment, the whole settlement may be upset. If the present definition satisfied all parties—from 1885 to 1928, why then ask for this amendment? I would therefore respectfully request my friends to the right to consider the matter still further and to consider calmly and dispassionately whether it is very important from their point of view to insist on this amendment. I would also appeal to them to consider whether, in view of the opinion held by an important section of this House on this point, and in view of the fact that there is something like what you may call suspicion, if you like, it is not better in the wider interests of the community at large to withdraw the amendment.

The motion of Babu Amarendra Nath Ghose was then put and a division taken with the following results:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Remes Chandra.
Banerjee, Babu Prometha Nath.
Basu, Babu Basi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Bose, Babu Bejay Krishna.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Nazar Rahman.
Chaudhuri, Rai Harendranath.
Das Gupta, Dr. J. M.
Datta, Babu Akhil Chandra.
Dutt, Babu Sarai Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Goenka, Rai Bahadur Badridas.
Gupta, Mr. Jagesh Chandra.
Himatsingha, Babu Prabhu Dayal.
Khan, Babu Debendra Lal.
Khan, Mr. Razaur Rahman.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Rahman, Maulvi Shamsur-
Raikat, Mr. Prosanna Deb.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Ray, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Abbott, Mr. E. G.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmad, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.

Choudhury, Maulvi Khorshed Alam.
Dash, Mr. A. J.
Dowding, Mr. T. W.
Drummond, Mr. J. G.
Ghose, Mr. M. C.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
Hussain, Maulvi Latafat.
Ismail, Khan Bahadur Maulvi Muhammad.
James, Mr. F. E.
Karim, Maulvi Abdul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Luke, Mr. N. R.
Marr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Provash Chunder.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nazimuddin, Mr. Khwaja.
Nelson, Mr. W. H.
Parrett, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Rahim, Sir Abdur.
Rahman, Maulvi Azizur.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-Rauf, Maulvi Syed Abdur.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Mr. Abdool Razak Hajee Abdool.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 51 and the Noes 53 the following motion was lost:—

"That in clause 5 after the words 'servants or labourers' the words 'or by bargadar, adhiars or bhagdars' be added."

The following motion was called but not moved and therefore deemed to be withdrawn:—

Babu AMARENDRA NATH GHOSE to move that in clause 5 after the word "substituted" the following shall be added, namely: "after the words 'or with the aid of partners' the words 'and a person holding land whereon dwelling houses have been erected by such person for the purpose of residence of himself and members of his family' shall be inserted."

Babu AMARENDRA NATH GHOSE moved that in the explanation to sub-section (2) for the words "that he uses it for the purpose of gathering the produce of it or of grazing cattle on it" the words "that he does not presently use the land for such purpose" be substituted.

He spoke in Bengali, the English translation of which is as follows:—

"By this explanation the right of a tenant has been restricted to keep his land fallow; by this explanation the tenant has been allowed to keep his land fallow under certain particular circumstances such as to graze the cattle on it or to use it for gathering the produce of it. I want to make it more wide. There are some other circumstances for which a tenant keeps his land fallow. It may be so that a land is very low—consequently in most of the year its crops are washed away by flood—in that case a tenant may keep it fallow for some years in anticipation of its improvement in natural course. In a char

land the cultivators do not grow any crop as there the land is not at all fertile. Suppose one man dies with his wife leaving some orphans. There is none to look after the children—and this is why their lands remain fallow for some years. I want to give privileges in those cases by adding the words 'that he does not use the land for such purpose.' I hope all will support me."

Mr. F. A. SACHSE: Sir, this amendment if carried would have more far-reaching effect than the mover contemplates. It would be entirely inconsistent with section 18 (*b*) and section 25, which for many years have been in force. Section 25 lays down that—

"An occupancy raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

"(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

"(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract, between himself and his landlord, liable to be ejected."

Therefore, I say that such a radical alteration in the law cannot be considered in connection with an insignificant explanation hidden away under section 5 (*2*). As regards raiyats at fixed rates, the conditions under which they may be ejected are given in section 18. If the House wishes to introduce any change in these sections, they can discuss the matter in connection with the amendments which have been tabled to that effect. I, therefore, suggest that we should postpone consideration of this very important question.

The motion of Babu Amarendra Nath Ghose was then put and lost.

Clause 6.

The following motion was called but not moved, and therefore deemed to be withdrawn:—

Mr. Bijoy Prasad Singh Roy to move that clause 6 be omitted.

Mr. SATYENDRA CHANDRA GHOSH MAULIK: Sir, I beg formerly to move that in clause 6 in the proposed section 8 for the words "ten years" the words "seven years," be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I want to oppose this amendment for the very simple reason that these gentlemen do not seem to be satisfied with what they have already got. What is the purpose of this amendment? It proposes to curtail the period for gradual spreading over of the enhancement of rent.

The following motions were called but not moved and therefore deemed to be withdrawn:—

Maharaja SASHI KANTA ACHARJYA CHAUDHURI to move that in clause 6 in the proposed section 8, line 7, for the word "ten" the word "six" shall be substituted.

Mr. KIRAN SANKAR ROY, Dr. KUMUD SANKAR RAY, Mr. E. T. McCLUSKIE, Mr. PROSANNA DEB RAIKAT and Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 6 in the proposed section 8, line 7, for the word "ten" the word "five" shall be substituted.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I oppose the amendment moved by Mr. Satyendra Chandra Ghosh Maulik. The reasons given by my friend, Khan Bahadur Maulvi Azizul Haque, are the very reasons for which I oppose this amendment. My point is that the period of ten years laid down in the Bill for the purpose of enhancing the rent is not a long period, and therefore it should not be curtailed.

Mr. F. A. SACHSE: Sir, the amendment of section 8 proposed in the Bill does not involve a matter of principle: it is merely a matter of convenience. Under the law, as it stands at present, when a progressive enhancement is given by a court, it must be spread equally over 2, 3, 4, or 5, years, and not more. Now, we have experienced practical difficulties in dealing with enhancements of rent in Government estates. When a rent is raised from, say, Rs. 6 to Rs. 14, we want the jamabandi officer to be able to fix the new rent at Rs. 9 for the first 5 years, at Rs. 12 for the next 5 years, and at Rs. 14 thereafter. Surely, nobody can object to this proposal?

The motion of Mr. Satyendra Chandra Ghosh Maulik was then put and lost.

Adjournment.

The Council was then adjourned till 2-45 P.M., on Wednesday, the 15th August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Wednesday, the 15th August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, and 112 nominated and elected members.

Starred Questions

(to which oral answers were given).

Steamer fares from Chittagong to Sandwip and Hatia.

*57. **Maulvi NURUL HUQ CHAUDHURI:** Will the Hon'ble Member in charge of the Marine Department be pleased to lay on the table a statement showing the variation in 3rd class steamer fares from Chittagong to Sandwip and Hatia during the last 15 years?

MEMBER in charge of MARINE DEPARTMENT (the Hon'ble Mr. A. Marr): The information required by the hon'ble member is as follows:—

Chittagong to Sandwip—1914—annas 8, 1918—annas 8-9, December 1918—annas 10, 1921—annas 11, 1922—annas 12-9, 1924-28—Re. 1-0-9.

Chittagong to Hatia—1914—annas 14-6, 1918—Re. 1, December 1918—Re. 1-0-6, 1921—Re. 1-2-6, 1922—Re. 1-5-3, 1924-28—Re. 1-11.

Srijut NAGENDRA NATH SEN: Will the Hon'ble Member be pleased to state if these steamer fares are subject to any statutory rules and regulations?

The Hon'ble Mr. A. MARR: So far as I know, they are not.

Srijut NAGENDRA NATH SEN: Will the Hon'ble Member be pleased to state if Government intend to acquire powers under any law to regulate the steamer fares so that the Steamer Companies may not arbitrarily increase them at their sweet will?

The Hon'ble Mr. A. MARR: No.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state what is the reason of such increase during a period of 15 years?

The Hon'ble Mr. A. MARR: I am afraid I cannot say.

Attiah Forest, management of.

*58. **Maulvi NURUL HUQ CHAUDHURI:** With reference to the reply given on the 10th July, 1928, to starred question No. 19, will the Hon'ble Member in charge of the Department of Revenue (Forests) be pleased to state—

(i) whether the proprietors who had applied to the Government for taking over the management of the Attiah Forest signed in each case their own names, if not who signed for them; and

(ii) what was their authority for signing the names for others?

MEMBER in charge of DEPARTMENT of REVENUE (FORESTS) (the Hon'ble Nawab Bahadur Saiyid Nawab Ali Chaudhuri, Khan Bahadur, of Dhanbari): (i) In some cases the proprietors signed; in some cases attorneys or agents.

(ii) Government have no information.

Maulvi NURUL HUQ CHAUDHURI: Is the Hon'ble Member aware that under section 38 of the Act, Government are not entitled to take over the management of private forests without the consent in writing of the proprietors amounting to more than two-thirds of the proprietors?

The Hon'ble Nawab Bahadur SAIYID NAWAB ALI CHAUDHURI, Khan Bahadur, of Dhanbari: Yes.

Maulvi NURUL HUQ CHAUDHURI: If so, will the Hon'ble Member be pleased to say that without ascertaining the power and authority of the attorneys, how the Government satisfied themselves that the proprietors actually consented to have their forests managed by Government?

The Hon'ble Nawab Bahadur SAIYID NAWAB ALI CHAUDHURI, Khan Bahadur, of Dhanbari: The local officers were satisfied.

Maulvi NURUL HUQ CHAUDHURI: Have the Government any information that as a matter of fact two-thirds of the co-sharers of the property actually consented in writing through their attorneys?

The Hon'ble Nawab Bahadur SAIYID NAWAB ALI CHAUDHURI, Khan Bahadur, of Dhanbari: Yes.

Maulvi NURUL HUQ CHAUDHURI: Will the Hon'ble Member be pleased to state if the Government are in a position to say whether the attorneys who signed the application had really any authority to sign the application? How were they satisfied that the proprietors had consented as a matter of fact?

The Hon'ble Nawab Bahadur SAIYID NAWAB ALI CHAUDHURI, Khan Bahadur, of Dhanbari: I have already replied that the local officers were satisfied.

Supply of filtered water on the passenger steamers of I. G. N. R. Co.

***59. Maulvi NURUL HUQ CHAUDHURI:** (*a*) Will the Hon'ble Member in charge of the Marine Department be pleased to state whether it is a fact that on the passenger steamers of the I. G. N. R. Co. there is no arrangement for the supply of filtered water to the inter and 3rd class passengers?

(*b*) Is it a fact that the number of water-closets for inter and 3rd class passengers is inadequate?

(*c*) Is it a fact that those closets are uncomfortable and offensive to the sense of decency?

(*d*) Is it a fact that during the voyage of steamer the closets are never cleaned or washed?

(*e*) Is it a fact that the 3rd class passengers, cattle, poultry, fish and merchandise are inextricably mixed together upon these steamers?

(*f*) Is it a fact that there is only one pump for washing purposes for all passengers of the inter and 3rd classes?

(*g*) Are the Government aware of the rule prescribing the limit of the number of passengers which each steamer can carry?

(*h*) Is the Hon'ble Member aware that these steamers usually carry more than the maximum number of passengers prescribed?

(*i*) Is it a fact that the landing stages at the Sandwip and Hatia Ghats are 5 to 6 feet higher than the *sampans* which carry the passengers from and to the shores?

(*j*) Is it a fact that old men, women and children are put to great hardship on account of the defective arrangement for embarkation?

The Hon'ble Mr. A. MARR: (*a*) Government are informed that, in accordance with the rules on the subject, a sufficient supply of fresh drinking water is carried on passenger steamers for intermediate and third class passengers. Filtered water is not supplied.

(*b*), (*c*), (*d*), and (*e*) The answer is in the negative.

(*f*) Yes.

(*g*) Yes.

(*h*) No; no such complaints have been sent to Government.

(*i*) and (*j*) The hon'ble member is referred to the answer given to starred question No. 15 at the meeting of the Council held on the 23rd August, 1927.

Srijut NAGENDRA NATH SEN: Will the Hon'ble Member be pleased to state under what rules are those referred to in paragraph (*a*) of the answer?

The Hon'ble Mr. A. MARR: As far as I remember, these rules are framed under the rule-making section of the Inland Steam Navigation Act.

Srijut NAGENDRA NATH SEN: Will the Hon'ble Member be pleased to state whether in the answer to (*a*) the information was supplied by the Steamer Companies or whether Government officers were employed for eliciting information?

The Hon'ble Mr. A. MARR: I am afraid I cannot remember.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state the number of water-closets that is provided for intermediate and third class passengers, and the average number of passengers?

The Hon'ble Mr. A. MARR: I cannot say.

Dr. KUMUD SANKAR RAY: Will the Hon'ble Member be pleased to state whether it is not a fact that filtered water is supplied only to first and second class passengers? Is there any reason why third class passengers should not be supplied filtered water for drinking purposes?

The Hon'ble Mr. A. MARR: I am afraid I cannot say.

Mr. KIRAN SANKAR ROY: Will the Hon'ble Member be pleased to state if these closets for the intermediate and third class passengers are exposed to view?

The Hon'ble Mr. A. MARR: I am afraid I am not an authority on inland steamers.

Mr. JOGESH CHANDRA GUPTA: Has the Hon'ble Member made any enquiries by any Government officer after the receipt of this question?

The Hon'ble Mr. A. MARR: Yes.

Khan Bahadur Maulvi AZIZUL HAQUE: Will the Hon'ble Member be pleased to state whether Government are satisfied that the water supplied to the third class passengers is safe for drinking purposes?

The Hon'ble Mr. A. MARR: I am not in a position to answer that question.

Dr. KUMUD SANKAR RAY: Is the Hon'ble Member prepared to make an enquiry?

The Hon'ble Mr. A. MARR: I am quite prepared to enquire if I get notice of the question.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state the name of the officer who made the enquiry and lay his report on the table?

The Hon'ble Mr. A. MARR: I am afraid I cannot remember; I have not got the file here. I am not prepared to lay the report on the table.

Maulvi NURUL HUQ CHAUDHURI: With reference to the answers to questions (*b*) and (*c*), will the Hon'ble Member be pleased to state whether the information was supplied by the Steamer Companies in question or by somebody else?

The Hon'ble Mr. A. MARR: I have already said I have not the file with me, and I cannot say who made the enquiry.

Khan Bahadur Maulvi AZIZUL HAQUE: Will the Hon'ble Member be pleased to state whether there is any department of Government to look after this aspect of public health, so far as the supply of drinking water on Steamer Services is concerned?

The Hon'ble Mr. A. MARR: I am afraid I do not know.

Mr. PRESIDENT: I think the Hon'ble Member requires fresh notice of this question. He is not in a position to answer it now.

Maulvi NURUL HUQ CHAUDHURI: Will the Hon'ble Member be pleased to state whether there is any rule prescribed by Government fixing the number of passengers which a steamer can carry on board?

The Hon'ble Mr. A. MARR: Yes, under the Act.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state whether the Steamer Companies observe those rules?

The Hon'ble Mr. A. MARR: I presume they do so.

Khan Bahadur Maulvi AZIZUL HAQUE: Will the Hon'ble Member be pleased to state who looks after the observance of those rules so far as Government are concerned?

The Hon'ble Mr. A. MARR: As far as I remember, no special staff is maintained for this, but if it is brought to the notice of the local Magistrate, he will take action.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state whether it is a fact that during holidays third class passengers are packed like sardines on the steamers?

The Hon'ble Mr. A. MARR: I have no information.

Khan Bahadur Maulvi AZIZUL HAQUE: Will the Hon'ble Member be pleased to state whether he considers it desirable to take some steps from the point of view of public health, at least in the epidemic season?

The Hon'ble Mr. A. MARR: I really cannot say, as this is a matter for the Public Health Department.

Mr. JOGESH CHANDRA GUPTA: May we know, Sir, if these supplementary questions would be noted and answers given later on?

Mr. PRESIDENT: You remember the circular that I issued on the point, and if you look that up and act accordingly you will have your answers.

Abolition of the post of a tallyman at Ramkristopur Gola Siding.

*60. **Kazi EMDADUL HOQUE:** (*a*) Is the Hon'ble Member in charge of the Department of Public Works (Railways) aware that the abolition of the post of a tallyman at Ramkristopur Gola Siding with the East Indian Railway—

(*i*) has caused inconveniences to the rice merchants of Ramkristopur (Howrah);

(*ii*) has been detrimental to the interest of the rice merchants of the locality; and

(*iii*) has been a source of trouble, damage, pilfering, shortage and other sorts of business losses suffered by the local rice merchants?

(*b*) Is the Hon'ble Member aware that prior to the abolition of the post of the tallyman, there was, normally speaking, no complaint of shortages and pilfering, etc., on the part of the rice traders of the locality?

(*c*) Will the Hon'ble Member be pleased to state—

(*i*) when the appointment of the tallyman first came into operation;

(*ii*) when it ceased; and

(*iii*) what were the reasons that led to the abolition of the said appointment?

(*d*) Will the Hon'ble Member be pleased to state whether any representation was made by the local merchants to the Government of Bengal for the renewal of the appointment?

(*e*) If so, have the Government considered the matter and what is their decision?

(*f*) Are the Government considering the desirability of drawing the attention of the Railway Board or the authorities concerned in this matter and of taking necessary steps?

(*g*) If the answer to (*f*) is in the negative, are the Government considering the desirability of inquiring into the matter?

(*h*) Is the Hon'ble Member aware that mill-owners are all along enjoying the services of a tallyman?

(*i*) If so, what are the reasons for such differential treatment?

MEMBER in charge of DEPARTMENT of PUBLIC WORKS (RAILWAYS) (the Hon'ble Mr. A. Marr): (*a*) to (*i*) This is a matter of railway internal administration with which this Government is not in a position to interfere.

Unstarred Questions

(answers to which were laid on the table).

Rules prohibiting the taking of loans by Government servants.

47. Dr. PRAMATHANATH BANERJEA: (*a*) Will the Hon'ble Member in charge of the Judicial Department be pleased to lay on the table a copy of the rules prohibiting the taking of loans by Government servants from persons subject to their official authority?

(b) Is it a fact that Babu Lalit Mohan Banerjee, Head Clerk in the office of the Chief Presidency Magistrate, Calcutta, has been borrowing money (on execution of pro-notes or otherwise) from clerks subject to his official authority?

(c) If the answer to (b) is in the affirmative, will the Hon'ble Member be pleased to state whether he has ever reported to the Chief Presidency Magistrate in writing as to the circumstances under which he was borrowing money?

(d) Is it a fact that a petition was sent to the Government of Bengal regarding the practice of his borrowing money?

(e) If so, has any inquiry been made into the matter?

(f) Is it a fact that the said Babu Lalit Mohan Banerjee has already attained the age of 55 and is now on an extension?

(g) Is there any proposal for a further extension of service being granted to him?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (a) A copy of the rules is laid on the table.

(b) Yes. The loans have been paid in full.

(c) He reported the circumstances verbally to the Chief Presidency Magistrate.

(d) and (e) An anonymous petition was received by Government, and it was sent to the Chief Presidency Magistrate for disposal.

(f) He is 56 years of age and is not on extension as under the rules a ministerial officer may ordinarily be retained in service, if he continues efficient, up to the age of 60 years.

(g) The question does not arise.

Rule referred to in the reply to clause (a) of unstarred question No. 47.

EXTRACT OF RULE 8 OF THE GOVERNMENT SERVANTS' CONDUCT RULES.

8. (1) A gazetted officer may not lend money to any person possessing land within the local limits of his authority, nor may he, except in the ordinary course of business with Joint Stock Bank or a firm of standing, borrow money from, or otherwise place himself under a pecuniary obligation to, any person subject to his official authority, or residing, possessing land or carrying on business within the local limits of such authority.

(2) When a gazetted officer is appointed or transferred to a post of such a nature that a person from whom he has borrowed money or to whom he has otherwise placed himself under a pecuniary obligation

will be subject to his official authority or will reside, possess immovable property or carry on business within the local limits of such authority, he must forthwith declare the circumstances to the Government through the usual channel.

(3) The orders contained in this rule apply also to non-gazetted officers, but, in the case of the latter, they may be relaxed in exceptional cases at the discretion of the head of their office. Non-gazetted officers should make the report referred to in sub-paragraph (2) to the head of their office:

Provided that this rule in so far as it relates to the lending to or borrowing by Government servants from Co-operative Societies registered under Act II of 1912, shall be subject to any general or special restrictions or relaxations made or permitted by the local Government.

Scheme for amalgamation of the Calcutta Police Courts.

48. Dr. PRAMATHANATH BANERJEA: Will the Hon'ble Member in charge of the Judicial Department be pleased to state what steps have been taken by the Government for an amalgamation of the Calcutta Police Courts since a resolution urging such measure was passed by the Bengal Legislative Council in 1923?

The Hon'ble Mr. W. D. R. PRENTICE: Several schemes have been examined, but have had to be abandoned because of the expenditure involved. There is no prospect of amalgamation in the near future.

Waiting-rooms for the parties and their witnesses in the Jorabagan Police Court, Calcutta.

49. Dr. PRAMATHANATH BANERJEA: (*a*) Is the Hon'ble Member in charge of the Judicial Department aware that there are no waiting-rooms for the parties and their witnesses in the Jorabagan Police Court, Calcutta?

(*b*) Is the Hon'ble Member also aware that they have to wait in the corridors?

The Hon'ble Mr. W. D. R. PRENTICE: (*a*) Although there is no proper waiting-room for parties and witnesses, there is a long covered verandah to the south of the court-room, where witnesses and parties are allowed to sit and wait.

(*b*) Does not arise.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

Clause 7.

The following amendment was called but not moved and, therefore, deemed to be withdrawn:—

Babu JATINDRA NATH CHAKRABURTTY to move that in clause 7, line 1, after the word "Act" the following shall be inserted, namely:—

"for the words 'enhanced by the court or by contract,' the words 'enhanced by the court or settled by contract' shall be substituted at the end."

Khan Bahadur Maulvi AZIZUL HAQUE: What about amendments No. 82, 83 and 84?

Mr. PRESIDENT: I will come to these later on. I find it will be convenient to the House if they are taken together.

Khan Bahadur Maulvi AZIZUL HAQUE: May I have your permission to move amendment No. 82, on behalf of Kazi Emdadul Hoque?

Mr. PRESIDENT: Yes.

Srijut NAGENDRA NATH SEN: On a point of order: I submit with regard to the proposed amendment in section 9 of the said Act for the words "15 years" the words "25 years" be substituted is not in order, because it is outside the scope of the amending Bill.

Mr. PRESIDENT: Mr. Sen, you have raised a rather difficult point, and I have some doubt as to whether you are right or wrong. I had the assistance of four legal experts on this matter, and as it is already on the agenda paper, I think I will allow the amendment.

Mr. JOGESH CHANDRA GUPTA: May we make this point of order a little more clear?

Mr. PRESIDENT: The point of order has been disposed of, namely, I have allowed Khan Bahadur Maulvi Azizul Haque to move it.

Khan Bahadur Maulvi AZIZUL HAQUE: Although the Government are not satisfied as to the legality of the amendment, at least to satisfy myself I want to move it for a little furtherance of the rights of the people who are tenure-holders. So far as section 9 is concerned, the general principle is—once there is an enhancement, there

should be no further enhancement for another 15 years. We consider that the period of 15 years is rather small in the life of a man, and considering the fact that often times that he had to incur expenditure for running into litigation, I think the time should be increased a little further. I want to remind the members of the House that in provinces where there are temporary settlements, the general revision is held after 30 years, and there is no reason why we should allow so frequent enhancement to the landlords. In view of the fact that there should be no frequent enhancement of rent and in view of the fact that we believe that similar privileges might be extended to the raiyats, we propose that instead of 15 years the period of enhancement should be 25 years. In other words, there should be no enhancements by contract or otherwise for a period of 25 years. With these words I beg to move that for clause 7 the following be substituted, namely:—

"9. In section 9 of the said Act—(*1*) for the words "fifteen years" the words "twenty-five years" shall be substituted.

Mr. D. E. J. BURGE: I beg to oppose this amendment. Under the present law, the period is 15 years only, and it has been the custom in Bengal not only in private estates but also in Government estates. The custom has grown and is recognised generally. The enhancements under this section are entirely for the benefit of the landlords. Section 37 (*1*), on the other hand, gives a similar right of enhancement within 15 years in the case of raiyats. Section 37 (*1*) is not being amended by this Bill. Consequently, if this amendment is accepted, the raiyat may be liable for enhancements after 15 years, whereas the tenure-holders' rate may be enhanced after 10 years in this case and after 25 years in the case of other amendments. There is no reason why tenure-holders should retain the unearned increment at the expense of the landlords.

Maulvi SYED NAUSHER ALI: I support this amendment. I won't repeat what has been said by Khan Bahadur Azizul Haque, but I will say this much about the alleged custom: What is this custom? An arbitrary period of 15 years and not 25 years has been fixed by a piece of legislation and after a lapse of time, it is being pleaded that the custom is 15 years, I submit no question of custom arises. The point for consideration before the House is whether 15 years is a sufficiently long period, or whether it should be 25 years. We should not in any way be influenced by the idea that 15 years has been in this Act for some time past.

As regards the argument that section 37 (*1*) that relates to enhancibility of a raiyat's rent, is not being amended, there is no reason why the tenure-holder should get an advantage which the raiyat would not get: Against that argument we the members of this part of the House

want to say that we want to give some right to the tenant. If we are unable to give any more rights or privileges to the raiyat, on account of the said section not being amended, I want just to say that it is not our fault but the fault of Government for not amending that section. I support this amendment, and I submit that it is only fair to the interest of tenure-holders that the period of 15 years should be raised to 25.

Maulvi NURUL HUQ CHAUDHURI: I beg to move that in clause 7—(*1*) at the beginning of clause 7 the following shall be inserted, namely:—

(*1*) in section 9 of the said Act for the words "fifteen years" the words "thirty years" shall be substituted;

(*2*) in the amendment of section 9 for the words "of such order" the words "when the full amount of the enhancement ordered by the Court came into effect" shall be substituted.

(*3*) to the said clause 7 the following provisos shall be added, namely:—

"Provided that where a tenure has been held from the time of permanent settlement its rent shall not be liable to enhancement except on proof that the landlord under whom it is held is entitled to enhance the rent thereof by the express terms of the lease in writing under which the tenure is held. In particular the rent of such tenure shall not be liable to enhancement on the ground that the tenure-holder by receiving reduction of his rent, otherwise than on account of a diminution of the area of the tenure has subjected himself to enhancement;

Provided further that where the rent of a tenure-holder is liable to enhancement it may, subject to any contract between the parties, be enhanced up to such limit as the Court thinks fair and equitable. In determining what is fair and equitable the Court shall not enhance the rent by more than 10 per cent. of the rent payable for the tenure before the enhancement."

The amendment consists of three clauses. The first clause.....

Mr. PRESIDENT: Are you going to move the whole amendment?

Mr. W. H. NELSON: On a point of order: The third part of amendment No. 83 of Maulvi Nurul Huq Chaudhuri is really an amendment to section 7 of the Act, and not an amendment to section 9 of the Act. It is, therefore, out of order.

Mr. PRESIDENT: What I find is that the third part of your amendment touches section 7, whereas the amending Bill exposes only section 9. You are, therefore, not permitted to move that.

Maulvi NURUL HUQ CHAUDHURI: The House, I submit, and you, as President, have not got the whole of the facts before you. Therefore, you cannot look into the other sections of the Act.

Mr. PRESIDENT: Order, order. You are not permitted to refer to the Chair in that fashion. What I would tell you is that you are allowed to move only the first and second parts of your amendment No. 83. That decision is final.

Maulvi NURUL HUQ CHAUDHURI: Am I to understand that I am precluded from moving my amendment altogether?

Mr. PRESIDENT: No. You can move the first and second parts of your amendment. The third part is out of order.

Maulvi NURUL HUQ CHAUDHURI: Clauses 1 and 2 of my amendment relate to the same matter as has been dealt with by my friend Khan Bahadur Maulvi Azizul Haque, with this difference, that whereas in the amendment which has been proposed by the Khan Bahadur the period during which a second enhancement can be made is only 25 years, in my amendment it is 30 years. I have proposed this amendment for this reason: The tenures which are liable to enhancement in this province are exactly in the same position as estates and tenures in the provinces where the land revenue has not been permanently settled, and there according to the ancient law and custom of the country as well as the practice of the British Government the revision of revenue is made once in 30 years. I cannot understand when it is considered reasonable that a person whose property is subjected to enhancement should not again be liable to enhancement during 30 years in the United Provinces and the Punjab, why the same rule should not be applicable to Bengal. I, therefore, propose that at the beginning of clause 7 the following should be inserted:—

> "In section 9 of the said Act for the words '15 years,' the words '30 years' shall be substituted."

As regards my second amendment to section 9 of the Act, it states that for the words "of such order," the words "when the full amount of the enhancement ordered by the Court came into effect" should be substituted.

The amendment proposed by the Government is this:—

"and for the purposes of this section, if an order of gradual enhancement of such rent has been made by the Court in accordance with the provisions of section 8, the full rent fixed by such order shall be deemed to have come into effect from the date of such order."

Section 8 of the Act gives wide discretion to the Court whether the enhancements given should be spread over a period of time. The section itself has not fixed any period when the full enhancement should come into effect. There is nothing to prevent the Court under section 8 from decreeing an enhancement which will be spread over more than 15 or, say, 20 or 30 years. That being so, what would be the effect of section 9? It will empower the landlord to sue for a second enhancement before the first enhancement has completely come into operation. I am asking the Council in my amendment to declare that once an enhancement has come into effect, the tenure-holder should get a respite of some period which may be 15 years according to the Act or which we propose to be 30 years but whatever may be the period during which the tenure-holder may have a respite, at any rate the period should be counted not from the date of order but from the date when the full amount of enhancement comes into operation. The section as it is may easily lead to an anomaly. If, for example, in any case a decree of gradual enhancement is spread over a period of 30 years and if the zamindar wants to enhance the rent, there is nothing to prevent him to institute a second suit for enhancement after 15 years. The result will be that before the former enhancement has come into full effect, there will be a second suit for enhancement. This will be extremely embarrassing and very unfair to the tenure-holders. In order to avoid these anomalies, I propose that the House should accept my amendments, that is to say, accept the period of 30 years instead of 15 years as laid down under the Act, as the period during which the second stage for enhancement will lie, counting the period of 15 or 30 years as the case may be from the time when the first enhancement will come into full operation.

[3-15 p.m.]

Srijut NAGENDRA NATH SEN: The amendment of Maulvi Nurul Huq Chaudhuri seems to be eminently satisfactory so far as tenure-holders are concerned. But I am sorry, Sir, that he has left out of consideration another set of persons who are equally interested in this matter. It is quite true, Sir, that the fixity of tenure for a certain number of years is uncertain. But the proposed change would work unfavourably against the proprietors of estates, specially in non-permanently-settled areas which are abundant in the districts of

Khulna, Barisal and the 24-Parganas. These proprietors have their revenue revised every 15 to 20 years, and my friend Rai Satyendra Nath Ray Chaudhuri Bahadur tells me, even after every 10 years. If tenure-holders have a statutory right that their rent will not be revised within a period of 30 years and if, Sir, within that period the proprietors' revenue is enhanced by Government, the proprietors will find themselves in a position of great embarrassment. If, however, the Government Member will give us an undertaking that the periodical assessment of revenue in non-permanently-settled areas will not be taken in hand within a period of at least 40 years, in that case only Maulvi Nurul Huq Chaudhuri's amendment can be accepted, otherwise not, as he leaves out of consideration the case of the proprietors whose revenue may be increased in the meantime. So I consider, Sir, that at this stage this amendment is rather premature.

Maulvi SYED NAUSHER ALI: Before I move this motion, Sir, I would rise on a point of order. I would like to point out that I sent in two amendments which have been consolidated by the Legislative Department into one, and that again in a manner which is ambiguous, with the result that it has made the whole thing vague. The words "by the Court" occurs in two places in the proposed section.

Mr. PRESIDENT: We will just find out if what you say is right. But in the meantime, I want to know whether you want to move the amendment as it stands now.

Maulvi SYED NAUSHER ALI: As the amendment now stands, Sir, it is ambiguous and it is no use moving it.

The following amendment was, therefore, not moved:—

Maulvi SYED NAUSHER ALI, to move that in clause 7 in section 9 of the Act, the words "by the Court" be omitted, and in the said section for the word "fifteen" in the third line, the words "twenty-five" be substituted.

Maulvi SYED NAUSHER ALI: If it is found that the office made a mistake, may I know, Sir, what will be the effect of it?*

Mr. PRESIDENT: I could not decide that alone. I should, however, say that in that case justice would demand that you should not be made to suffer for others' mistakes.

Mr. B. E. J. BURGE: With regard to the amendment of Maulvi Nurul Huq Chaudhuri, the arguments I used on a former occasion in

*It was subsequently ascertained that the mistake was the member's and not that of the Legislative Department.

connection with item No. 82 (*1*) hold equally good in case of this period of 30 years also. Therefore, I do not propose to go into those arguments again.

With regard to the second part of this amendment, the Courts proceed in this way—Where the enhancement has been gradual, the date on which full rent will come into force will be held to be the last date of this gradual assessment. This leads to an anomaly, inasmuch as the Court when it decrees the rent, decrees the full rent, but on the ground of hardship to the tenants, it allows the gradual assessment to be spread over a period of 3, 4 or 5 years. There is no logical reason to differentiate between the decision which actually comes into force but which is alleviated by the Court, and the decision which decrees the rent which is paid at once. Therefore, I oppose the amendment and think the law as has been provided in the Bill should remain.

Mr. PRESIDENT: For the convenience of the House, I will put the motion moved by Khan Bahadur Maulvi Azizul Haque and thereafter the first two parts of the motion moved by Maulvi Nurul Huq Chaudhuri, separately.

The motion that for clause 7 the following be substituted, namely:—

"9. In section 9 of the said Act for the words 'fifteen years' the words 'twenty-five years' shall be substituted"

was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Ismail, Khan Bahadur Maulvi Muhammad.
Karim, Maulvi Abdul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahim, Sir Abd-ur-.
Rahman, Maulvi Shamsur.
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Ramea Chandra.
Banerjea, Dr. Pramathanath.
Banerjea, Babu Promotha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjea, Srijut Bijay Kumar.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Rai Harendranath.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Drummond, Mr. J. G.

Dutt, Babu Saral Kumar.
Fyfe, Mr. J. H.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. S.
Khan, Babu Debendra Lal.
Lala, Babu Sarada Kripd.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Pravash Chunder.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakenath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. N.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Dr. Sidhan Chandra.
Roy, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sashse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sarker, Rai Sahib Rebati Mohan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

The Ayes being 18 and the Noes 72, the motion was lost.

3-30 p.m.

The following motion was then put and lost:—

That in clause 7—(1) At the beginning of clause 7, the following shall be inserted, namely:—

"(*1*) in section 9 of the said Act for the words 'fifteen years,' the words 'thirty years' shall be substituted."

The following amendment was then put:—

That in clause 7—(1) That at the beginning of clause 7 the following shall be inserted, namely:—

"(*2*) in the amendment of section 9 for the words 'of such order,' the words 'when the full amount of the enhancement ordered by the Court came into effect' shall be substituted."

The motion being put, a division was taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Ismail, Khan Bahadur Maulvi Muhammad.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahim, Sir Abd-ur-.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Premotha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Blair, Mr. J. R.
Bose, Babu Sejoy Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Rai Harendranath.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Chowdhury, Maulvi Khershed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dowding, Mr. T. W.
Drummond, Mr. J. G.
Dutt, Babu Saral Kumar.
Fyfe, Mr. J. H.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Lala, Babu Sarada Kripa.
Luha, Mr. N. R.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakanath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F. M. Abdur.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarkar, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

They Ayes being 18 and the Noes 72, the motion was lost.

The following motions were called but not moved and, therefore, deemed to be withdrawn:—

Babu JATINDRA NATH CHAKRABURTTY to move that in clause 7, line 1, after the word "Act," the following shall be inserted, namely:—

"for the words 'enhanced by the Court or by contract,' the words 'enhanced by the Court or settled by contract' shall be substituted at the end."

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 7, section 9, last line, for the words "from the date of such order," the words "from the year when the maximum rent was reached according to that order" shall be substituted.

Mr. PRESIDENT: (At 3-30 p.m.) The Council stands adjourned for 10 minutes for prayer.

Mr. PRESIDENT: Order, order. I am extremely sorry that I allowed myself to be misled by my friend the Deputy President. I naturally considered that he was an authority on the point. This is not the hour of prayer. However, we can always rectify our mistakes.

We shall now take up amendment No. 87.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: I move that after clause 7 the following shall be inserted, namely:—

"7A. To sections 12, 13, 15 and 26C of the Act the following paragraph be added, namely:—

'Where there are more than one landlord, the fees should be transmitted separately to each co-sharer having separate collection in proportion to their respective shares.'"

The object for moving this amendment is to give facility and enable co-sharer landlords to withdraw the landlord's fee so deposited in their joint names. The Bill provides that to withdraw such deposits, a joint petition of the co-sharer landlords or the services of a common agent will be required. Both are practically impossible. You know, Sir, how difficult it would be to get the consent of the different landlords residing generally at different places. The labour it involves, and the energy and the expense that would be required to undertake this task, would not be worth the while to withdraw such petty amounts. It is better to undergo loss and to give up the claims rather than to undertake this hazardous task. The landlord's fee are generally petty sums amounting to Re. 1, or Rs. 2 in the most. Even if the landlords do consent to send a joint petition, the cost which will be involved will be higher than the landlord's fee. One has to go through different stages for this purpose: first, an application has to be made with Court-fee stamps and a legal practitioner has to be engaged, some amount will also have to be spent for the clerks connected therewith, some expense will at the same time be incurred for attending the Courts for several days and, lastly, there are the fees for money-orders. All these will never compensate the landlord. There is more difficulty if one has to appoint a common agent. The selection of a person who will be acceptable to all the parties is practically impossible. The result is that these landlord's fee after a certain period lapse and are forfeited by the Government. The Government are indirectly benefited with the sums not their own. I do not think that the Government are eager to take advantage of this procedure and to make profit by it, nor do I think that tenants are agreeable that these sums should go to a third party. On the other hand, they are anxious for their own interests that the sums should be paid to the proper persons.

Another question that does arise is, how far is a landlord competent to give effect to a transfer when the landlord's fee has not been paid to him. To settle this point, a series of cases will arise which will be ruinous both to the landlord and the tenant.

It will not be difficult for a tenant to ascertain the respective shares of different co-sharer landlords. In the document the rent of the co-sharer landlords are recited, and from this one can easily determine the amount of the landlord's fee to be sent to the respective co-sharers.

The Government may reply that the question involves a procedure which may be considered later on when rules are framed. I think this should not be so put off. These should be enacted in the law itself.

When these few remarks, I request the House to consider this amendment in the interests of the tenants as well as of the landlords, thereby preventing sums from going into the pockets of the Government for nothing.

3-45 p.m.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to oppose this amendment for the very simple reason that we do not want the zamindars to be lethargic. We want them to do a little bit of work, to know their own interests and, later on, to look after their interests. What is the purport of this amendment? It means that not only the landlord should get the money, but that the money must reach the very door of the landlord, even though there may be many dogs and a number of watchmen to guard them. What will be its effect? Its effect will be that Government will have to incur the expenditure of a very large sum of money in the shape of establishment charges, in order to know the names of the different co-sharers, and then, to divide the amount of, say, Rs. 2 into two hundred shares. Those who know the law of inheritance specially amongst the Muhammadan community will feel that the calculations will be a hopeless task. I do not know what are the facts at the disposal of Government, but I can give this little bit of information that it may involve the expenditure of a sum of no less than Rs. 5 to Rs. 6 lakhs if the Bill as it is presented to us is passed. Government will have to incur an extra cost of Rs. 5 to 6 lakhs in order to meet the necessary charges in connection with landlord's fee and salamis. I think it will entail a good deal of difficulty in the Collectors' or Registration offices, as they are not likely to know who are the co-sharer landlords. It is quite possible that a tenant sometimes may not choose to know, but the responsibility of the Collectorate and the Registration office will be there and these offices will have to determine the co-sharers' interests. The result will be that some day Government will be made a party to a suit brought by a

landlord that he is entitled to this money. I do not think, therefore, that it is desirable in the interests of public finance that so much responsibility should be thrown on Government. On the other hand, the present law provides that the landlord will get a notice. Probably, my friend wants that not only a notice but a copy of the sale deed should be sent to the landlord, about which we shall speak later. Can we not expect this much diligence from landlords to come to head-quarters and get their own money? I oppose this amendment in the interests of public finance.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): Sir, if you will permit me to speak at this stage, perhaps the time of the House may be saved. This amendment Government must oppose. This amendment has many defects, amongst others the fee of a co-sharer landlord in the case of the transfer of a permanent tenure may be one anna, or two annas. Suppose Rs. 2 is the total amount and there are 32 co-sharers, then the fee of an individual co-sharer landlord will be one anna. Now, who will bear the expense of the money-order? Surely not the tenant, because as soon as he pays Rs. 2, he does his duty; I am sure in order to collect his one anna, my friend, the Raja Bahadur, will not agree to pay the minimum postal charge. Then it will lead to complications of account, and it will increase the expenditure of Government. The question is, who will pay the additional expenditure? Surely, it is not right to ask the tax-payer to pay the additional expenditure. Then there may be disputes, as the share may not be the admitted share. Who will determine these disputes? Then, we all know that very often in these conveyances the word "digar," meaning others, is used against the name of the landlord. Who will ascertain them? Then the Raja Bahadur has mentioned "having separate collection in proportion." How is it to be found out? If, in the body of the document, the transferring tenant mentions something, it may be correct or it may not be correct. Now, if any investigation has to be made, is it worth while making any investigation for the sake of one anna or two annas? This amendment, as also the subsequent similar amendments, must be opposed. At the same time, Government do not want to stand in the way of either the landlord or the tenant, because if the question be not settled it may give rise to difficulties later on. Government may be perfectly prepared to consider the possibility of opening a separate account for deposits in favour of individual landlords under their rule-making power, and if that be done then the extra cost incurred must, of course, be paid by the landlord. If such a procedure be adopted, then the difficulties now experienced by the landlords may be removed. That is, however, a matter which does not arise in the Act itself. It will arise under the powers which Government possess for framing rules.

It may be quite possible to prepare rules which will enable the landlords to get their money at the end of six months, or at the end of a year. As I have already said, this amendment and others of a similar type must be opposed in the interests of the public purse.

Srijut NAGENDRA NATH SEN: I have listened with some sort of amusement to the arguments put forward by Khan Bahadur Maulvi Azizul Haque. His antipathy to the landlords is so very great that he will not allow the landlord's fee to be transmitted, but he would see that the Government officers are not overtaxed. His antipathy is so great that he is quite unmindful of the extra cost, trouble and worry that will fall on the landlords in coming to headquarters to get the refund of their fees which are deposited in the Collector's office. If you dispense with the question of landlord's fee altogether, that is one thing. If you concede that when there is a transfer of some interest in the land, the landlord is entitled to his fee, the question is whether a method should not be devised which will enable the landlord to get his due most cheaply and without any extra trouble to himself. He is not a party to the transfer. It is the interest of the transferee as well as the transferor to get the transfer registered in the books of the landlord. If it is possible to send notices of transfer to the landlord through the post, I do not see what extra cost would be necessitated in keeping an extra staff to send the landlord's fee by postal money-order to the landlord. It can be very well imagined that the landlord will have to undergo the trouble of a journey to the district headquarters, have to engage the assistance of lawyers, pay some Court-fees and lose some time in order to get a refund of one anna, or four annas, or one rupee—the landlord's fee cannot exceed Rs. 100 altogether. The two things have to be examined, viz., whether the worry and trouble to the landlord is greater or the complications owing to the want of knowledge of the shares of the co-sharers or additional expenditure to the Collectorates or Registration offices. I respectfully submit that the Council should accept the amendment of the Raja Bahadur of Nashipur.

Maulvi NURUL HUQ CHAUDHURI: Now, Sir, the question is not between tenants and landlords. The question is one between Government and landlords. I have heard the argument that has been advanced by the Hon'ble Member in charge. He has spoken like an oracle. If I had not suspected that he was eager to pocket the peoples' money, I would certainly have been convinced by his arguments. On account of the difficulty of sending out or transmitting this money to the co-sharer landlords, a large amount of unclaimed deposit has accumulated in the hands of the Government. If the Government would convince me of their sincerity that they have got

no eye upon this money, I would be willing to support the Government. If the Government would be prepared to accept the amendment, that if this money is not withdrawn by the landlords it will be handed over to the District Board funds after every three years, I would be willing to go to the same lobby with the Hon'ble Member. But as the Hon'ble Member has made no such declaration, the suspicion is that he is very anxious to get the money for Government. So, in my judgment, it will be much better if the Council by its vote would direct Government to transmit this money to the co-sharer landlords separately.

Sir ABD-UR-RAHIM: Sir, I wish to say one word with regard to this amendment. I should have thought that after the statement made by the Hon'ble Member in charge of the Revenue Department there would have been hardly anyone, especially from the Swarajist ranks, to rise in support of the amendment, which on the face of it is absurd. To ask the raiyat or the Government to find out the various co-sharer landlords is most unreasonable: it is a task which ought not to be imposed on them. It is the lookout of the zamindars themselves as to how many co-sharers there are. You cannot ask outsiders to find out that. On the face of it, this is a proposition which requires a great deal of defence, and I have not heard one word which would justify a provision like this. I hope, Sir, the House will have no hesitation in rejecting this amendment.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: Sir, in view of the fact that the Hon'ble Member has given an assurance that a separate account would be opened, I beg leave of the House to withdraw the motion.

The motion was then, by leave of the Council, withdrawn.

Clause 8.

Khan Bahadur Maulvi EKRAMUL HUQ: Mr. President, Sir, I find there is some mistake in the form in which my amendment has been put. My original motion was to the effect that at the end of the fourth line in clause 2, after the word "tenure," the following shall be inserted, namely—

> "or a person having a share in the tenure, or a person permanently living in the village where the tenure is situate, or a relation of the transferrer or a settled raiyat of the village."

I take it that I have to move the motion which I originally put in. In doing so, I should like to ask the Government as to what revenue

the zamindars were called upon to pay when the first settlement was made with them and what revenue they are called upon to pay now. I know that the answer would be that it was as it is now. Again, I would ask them this question: "Are the zamindars bound to pay to Government salami when they transfer their own holdings or when they succeed to the guddee?" I think the answer would be "No." What strikes me is that the zamindars and Government are out to compel the tenure-holders to pay salami to the landlords on transfers of holdings. To my mind, the zamindars and Government are pledge-bound to protect the tenure-holders and the tenantry in general. Is this the protection they are giving to them? I am afraid they are not discharging their duty, and that they are not doing what they ought to do. Further, Sir, my contention before the House is that Government have absolutely no right, no justification, to hand over the real owners of the soil to the tender mercies of the zamindars. And I further submit that the Government of the day who have made that settlement have absolutely no right to say that the tenants are not the actual owners of the soil.

Khan Bahadur MUHAMMAD ABDUL MUMIN: On a point of order, Sir. Is the member in order when discussing this section to deal with the right of the landlord or Government in regard to landlord's fee? This section does not speak of landlord's fee at all.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, my submission is that I am simply showing that under these circumstances, and the circumstances which I am going to place before the House, it is not at all right that this clause should have been included in the Bill. It is only a little mercy that I am asking for. I say that if the Government are actuated by honesty and by justice, they are bound to accept my amendment.

Sir, there was provision even in the settlement that was made by Lord Cornwallis, that tenure-holders and tenants holding under the zamindars would be protected. I ask the Government again: "Are you actually protecting the tenure-holders or the raiyats?" Certainly not. You are protecting your adopted sons. (A VOICE: "Who are they?") I mean the zamindars, and the party that has joined their fold, namely, the Swarajya Party—Dr. Bidhan Chandra Roy (A VOICE: And not the Khan Bahadur?) No. The Khan Bahadur has to fight tooth and nail in the interest of the agriculturists, and I am bound to vote for protecting the interests of the country, and we ought not to trust anybody who are with the zamindars. Now, what is it you want to do? You want that every person on the transfer of a permanent tenure must pay some salami. I know the Government is backed by the zamindars and also by their new friends, viz., the Swarajya

Party, and I know very well that I shall not be able to carry my point which is the protection of some of the tenure-holders. I ask for a small mercy only in cases when the transfer is made to a person having a share in the tenure, or a person permanently living in the village where the tenure is situate, or a relation of the transferrer or a settled raiyat of the village. I submit that in these cases Government should not think of realising any fees for the benefit of the zamindars. Sir, if Government accept this amendment, it will not only be a mercy but an act of justice which the Government will be doing to the tenure-holder and later, to the tenantry. Government say that they are out to protect the tenantry. Well, here is an opportunity, though a very small opportunity. I know the big members here will never care to show mercy to the poor raiyats.

Sir, I beg to state further that this is not only the desire of the electors of the general constituencies, but also of the peasants' associations all over Bengal, which have for their object the protection of the tenure-holders and the tenantry of this province. They have given us a mandate in regard to this matter. I may state for the information of the Council that this is the view of the Bangiya Nikhil Praja Samiti, Bengal Krishak and Raiyat Sabha, Central Raiyat Association, Malda Raiyat Association, Malda Krishak and Raiyat Sabha, Burdwan Raiyat Sabha, Dinajpur Praja Samiti, Rangpur Praja Samiti, and many others. It is the wish of the entire country that not only in this case but in all measures in which any attempt is made to protect the interests of the tenants, that attempt ought to be supported by the representatives of the people. I know those persons who have long purses do not care to act as real representatives of the people would do, for they know and think that their will is the will of the people. They know they will be able to come to the Council with the help of their purses, but I may tell them that it will be very difficult for them to show their face again in the country. They will be covered with shame if they spoil the rights of the tenantry in this House—be they zamindars or be they Swarajists.

Srijut NAGENDRA NATH SEN: Sir, in spite of the homily delivered by Khan Bahadur Maulvi Ekramul Huq, I think I must oppose the amendment, because it is irrational, illogical, ill-conceived and inequitable. Sir, the relationship between the landlord and the tenant is contractual, and if the landlord is to know who his tenant is, then some machinery ought to be devised by which the landlord should be enabled to know who his tenant is. The amendment proposed is that after the word "tenure" the words "or a person having a share in the tenure, or a person permanently living in the village where the tenure is situate, or a relation of the transferrer or a settled raiyat of the village" should be added, simply because

to give the tenure-holder or the raiyat some relief. In cases where the transfer is made to the landlord, who is one of the contracting parties, the landlord is enabled to know who his tenant is going to be. But if the transfer is made to a person having a share in the tenure or a person permanently living in the village where the tenure is situate, or a relation of the transferrer or a settled raiyat of the village, I for the life of myself cannot understand how the landlord is to be enabled to know who his tenant will be after the transfer. If the landlord has got to institute a suit for the realisation of his rent and to sue his old tenant, then, because the land was transferred to a person having a share in the tenure, the transferrer may come and say to the landlord "I have transferred my tenure and so you must pay the costs" and the poor man shall have to pay the costs. The suggestion for adding the words "a person permanently living in the village where the tenure is situate" is a monstruous proposition. For, it would be asking the landlord to know as to who are the persons who are permanently living in the village.

4-15 p.m.

Now, Sir, a big landlord has got his zamindary scattered over several villages, and it is not humanly possible for a zamindar or his naibs or gomostha to know who are the persons living in the villages where his zamindary is situate. A tenure-holder is living permanently in a village, and his tenure may be situated in more than one village. How will the zamindar and his agents be able to know who is who and who are his relations there? It is a very knotty question and gives rise to innumerable difficulties.

Then, Sir, with reference to the question of transfer to a relation of the transferrer: It is as vague as anything can possibly be. Sir, what is the definition of a "relation"? Has it ever been defined anywhere in the General Clauses Act, the Bengal Tenancy Act, the Indian Contract Act or in the Muhammadan or Hindu Law? Whether it is a relation by blood or marriage? Then who will decide whether a relation is within the third degree or seventh degree, or so forth? I pause for a reply. Will the mover kindly enlighten us what is his idea as regards relation?

Then, as regards "a settled raiyat of the village," the same remark applies equally to it as in the case of the person permanently living in the village. As I have said, the landlord has got to know and his naibs have got to know all this: and also in what relation, a tenure-holder stands with a tenant and so on. It will reduce the landlords to the position of ghataks (match-makers) who are likely to know these facts. I submit, Sir, that the amendment is illogical, irrational and as inequitable as it can possibly be.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, thoughts of marriage for a man like my friend, Babu Nagendra Nath Sen, come as very curious phenomena to us in this House, for we should have thought that he could have brought any other queer subject except marriage, because he is past that age. My friend, Babu Nagendra Nath Sen just a few minutes ago charged me with the crime that I am so obsessed with the idea of giving benefits to the tenants that I cannot see any good point in the Bill. I certainly do see the very good points which have been enunciated by him, because it is for the first time that we are told in this House that it is the most dangerous doctrine and a new phenomenon to ask landlords to go to the villages!

Srijut NAGENDRA NATH SEN: I never said that, Sir.

Khan Bahadur Maulvi AZIZUL HAQUE: But, Sir, I have taken a note of what he has said. It will mean that a landlord will have to know who is permanently residing in the village where the tenure is situate.....

Srijut NAGENDRA NATH SEN: That does not mean that a landlord will have to go to his village personally.

Khan Bahadur Maulvi AZIZUL HAQUE: If my friends think that it is a very great crime for a landlord to move to his village with a view to know who are permanently residing in the village.....

Mr. PRESIDENT: Khan Bahadur, you cannot pursue that point any further, having regard to the explanation which has been just now given. You should accept that explanation.

Khan Bahadur Maulvi AZIZUL HAQUE: I duly accept the explanation in the spirit in which it was given, but I think I can also charge my friend with a defective memory, but there is another point which has been mentioned by him a few minutes before, that a landlord will have to go to his headquarters. It is surely one of the greatest crimes that is proposed in this agrarian legislation, because by going to the headquarters he runs the risk of being attacked with malaria and leaving his luxurious life in the town! I had thought, Sir, that some sounder reason would have come from him. He began with some flimsy arguments, and I wonder that he came forward later on to use very good reasons against the arguments of Khan Bahadur Maulvi Ekramul Huq. There is no justification whatsoever for a landlord to remain absent or unconnected with people permanently living in the village. The landlord must know his village, and he must know his tenants, as it is right that he should be given notice with a view to know who is his tenant and who is not. The reasons

why Khan Bahadur Maulvi Ekramul Huq has moved this motion is this—When a transfer of permanent tenure takes place, a landlord gets a notice. Now my friend has taken advantage of this change and proposes the present amendment. I can quite understand the argument that it will be rather difficult to find out the man who is permanently residing in a village or whether he is a relation of a transferrer, and that is a fact to be considered. But so far as the question of co-sharer in the tenure is concerned, this difficulty does not arise at all. The real purport of the amendment is that it is not merely the man who is a landlord who has got an interest in land, but there is another person, a man who is a co-sharer, a relation of the transferrer, a settled raiyat in the village, a village-man. I am sure, Sir, that is the principle which stands behind the amendment of Khan Bahadur Maulvi Ekramul Huq.

Babu SURENDRA NATH BISWAS: I must oppose the amendment, Sir. In its true sense, it does not deserve any support, and I am surprised that Khan Bahadur Maulvi Azizul Haque has supported it. I would, in this connection, read clause 12(2) from the original Bill:—

> "A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or mortgage a permanent tenure in favour of any person other than the sole landlord of such tenure, unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called the landlord's fee) of the following amount, etc.

Sir, this section requires a process-fee as well as the landlord's fee to be paid, but for what purpose? Firstly, for the purpose of getting the landlord to know that a transfer of tenure has taken place. There is also provision for another fee which is called the landlord's fee. I do not grudge if the House rejects the landlord's fee. But I mean to impress upon the members of this House that our attitude must be just and reasonable in all matters relating to this Bill. There are some members, Sir, on my right who pose to be friends of the tenants, but I do not know whether in doing so they are serving their own interest or the interests of the tenants. Sir, the Swarajists are also not the least behind the tenants, and they can be depended upon to see that the tenants' cause is not injured. We are for both the landlords and the tenants. We are surprised to find that there are some members who cannot conceive that there may be sensible men who can do justice both to the zamindars and the tenants. Plead for the tenants by all means, but do not be blind to the interest of another party.

The landlord is entitled to know to whom the tenure is transferred. Leaving aside the landlord's fee, let us come to the process-fee which, according to the amendment, is not to be paid for the zamindar to know of the transfer even if a tenure be transferred to a person permanently living in the village where the tenure is situate. It is absurd and senseless. Not only that, not even in the case of transfer to a relation of the transferrer! Sir, it is absurd and preposterous.

Srijut Nagendra Nath Sen has pointed out that a tenure may be situated in more than one village and that it is difficult to know who is and who is not a relation of the tenant. According to the amendment, Sir, giving notice of the transfer has to be abolished. It is silly and senseless.

I wonder why the mover of the amendment did not include the relation of the transferree also? Perhaps he was not in a mood at that time to think of it.

With these words, Sir, I strongly oppose the motion.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I oppose this amendment. The proposal in the Bill is a very simple one. When a sole landlord is himself the proprietor, there is no point in depositing the landlord's fee, the whole of which is payable back to him. This is all that is intended to be cleared up in the Bill. The amendment which has been moved raises quite a different question. It is proposed that no landlord's fees should be chargeable when the permanent tenure-holder transfers to a co-sharer, a person permanently living in the village, or to a relation of his. Now, the clause in the Bill and the amendment on it refer to section 12 of the Act, which deals with the question of permanent tenure. The landlord's fee in individual cases of permanent tenure is a very small sum, namely, 2 per cent. of the annual rent, and it is undesirable to complicate matters by introducing such small exemptions. They will not benefit the tenants or the purchasers to any extent worth considering, and we should be careful that we do not put a bait in the law which may tend to unnecessary litigation. On the other hand, non-payment of a small amount like this under an impression that he is not likely to pay it under one or other circumstances as proposed in the amendment will only throw open the door for litigation, and raise doubts as to the validity of the transfer itself.

I might give an illustration, Sir: Suppose a tenure-holder sells his tenure held at a rent of Rs. 50; the landlord's fee in this case would be Re. 1. Now the man to whom he sells this holding is his brother's wife's maternal uncle's father-in-law—a relation of his. Now, Sir, on this ground of relationship he does not pay the landlord's fee. Very well. It is very easy to conceive that litigation will follow in

which the landlord would refuse to recognise the transfer and the Court will be engaged to hear arguments whether the brother's wife's maternal uncle's father-in-law would be a relation within the meaning of this section, and all this, Sir, for non-payment of Re. 1 only.

Similar arguments may be urged as regards the person who is treated as permanently living in the village. As has been pointed out by some of the members, it is vague. The question of permanent residence or permanent domicile can very often be made a matter of serious dispute. So also with regard to a co-sharer, for example, he may not be a recognised tenant. For all these reasons, Sir, I think it is not a matter worth while pursuing, and I hope Khan Bahadur Maulvi Ekramul Huq after hearing this explanation will think it better to withdraw the amendment.

Mr. A. K. FUZL-UL HUQ: The opposition to this amendment is so senseless, so irrational, so meaningless and so very absurd that I think it my duty to rise in protest against the remarks that have been made by Babu Surendra Nath Biswas. It is time, Sir, that my friends on the left—my Swarajist friends, who always pose to be the defenders of the rights of the people—should be told a plain word as regards the happenings of the last few days in this Council. I do not believe that this opposition of my Swarajist friends comes from a real understanding of the situation. It seems, Sir, they are simply watching the interests of the zamindars, and that is the reason why they are out to curtail the interests of the tenants. I protest very strongly against the manner in which the personal element has been introduced in the speech that has been delivered by Babu Surendra Nath Biswas.

4-30 p.m.

I could not hear what Khan Bahadur Maulvi Ekramul Huq said, but I do not believe that Khan Bahadur Maulvi Ekramul Huq introduced any personal element into the discussion. (VOICES: "He did.") Even if he did introduce a personal element, that is no reason why my friends on my left should introduce a personal element only because Khan Bahadur Maulvi Ekramul Huq dit it. I submit two wrongs do not make a right, and if Khan Bahadur Maulvi Ekramul Huq had been guilty of using an expression which is open to objection that is no reason why we should not control our temper and discuss the matter in an atmosphere free from passion and prejudice.

As regards the merits of the question itself, I fail to see the difficulties to which my friend Babu Surendra Nath Biswas has sought to draw the attention of the House. Supposing it is necessary that

the notice of a transfer should be given by the transferree to the relations of the transferrer I wonder why there should have been any hilarity in the House over the question that the word "relation" should be omitted. I submit that, as a matter of fact, the transferrer or any other tenant, although some mention has been made of them in the proposed amendment, are very justly entitled to a notice in the case of a transfer.

As regards the payment of landlord's fee, it is no curtailment of the landlord's right. It is only concerned with the manner of publicity of transfer, so that questions about such transfers may not subsequently be raised in the law court. Khan Bahadur Maulvi Azizul Haque has said that there can be no excuse for not sending a notice to relations of the transferrer in the village. No enactment like this ought to be on the Statute Book; it will be clearly unfair. It is the duty of the landlords to acquaint themselves with the tenantry in their estates. I know that at the present moment one of the evils from which our country suffers is the absentee landlord. If the absentee landlords reside in Chowringhee and attend theatres and cinemas, they cannot know their tenants; and this is the class of landlords which my friends, the Swarajists, are out here to support. The division list will show that they have walked into the same lobby with the zamindars with questionable facility. With these words I support the amendment.

Khan Bahadur Maulvi EKRAMUL HUQ: On a personal explanation: I do not remember to have made any personal remark. I simply referred to the party.

The motion of Khan Bahadur Maulvi Ekramul Huq was then put and a division taken with the following result:—

AYES.

Aizal, Maulvi Syed Muhammad.
Ahamed, Maulvi Asimuddin.
Ahamed, Maulvi Kasiruddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Karim, Maulvi Abdul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Nazimuddin, Mr. Khwaja.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Ray Chaudhuri, Mr. K. C.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Promotha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.

Chakrabortty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Rai Harendranath.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Chaudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dewding, Mr. T. W.
Dutt, Babu Saral Kumar.
Eddis, Mr. A. McD.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Lala, Babu Sareda Kripa.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakanath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Parrett, Mr. P.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Dr. Bidhan Chandra.
Ray, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarbadhikari, Dr. Sir Deva Prasad.
Sarker, Babu Naliniranjan.
Sarker, Rai Sahib Rebati Mohan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 18 and the Noes 82, the motion was lost.

[At 4-40 p.m., the Council was adjourned and it reassembled at 4-50 p.m.]

The following amendments were called but not moved, and therefore deemed to be withdrawn:—

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 8 (*1*) (*b*), line 2, for the words "prescribed cost," the word "cost" shall be substituted.

Raja BHUPENDRA NARAYAN SINHA Bahadur of Nashipur to move that in clause 8 (*1*) (*c*), after the word "substituted" the following be inserted, namely:—

"and for the words beginning with 'and the Collector' and ending with 'the notice' the words 'and a certified copy of the instrument of transfer and the Collector shall cause the fee to be transmitted to, and the notice together with the certified copy of such instrument of transfer' shall be substituted."

Raja BHUPENDRA NARAYAN SINHA Bahadur of Nashipur to move that at the end of clause 8 (*1*) (*c*) the following shall be added, namely:—

"and before the words 'to be served' the words 'and a certified copy of the instrument or transfer' shall be inserted."

Mr. BIJOY PRASAD SINGH ROY: May I have your permission, Sir, to move the next amendment which stands in the name of Raja Bhupendra Narayan Sinha Bahadur, of Nashipur?

Mr. PRESIDENT: Amendment No. 92 is covered by No. 87. But, as the latter was withdrawn, you may move the former if you so desire.

Mr. BIJOY PRASAD SINGH ROY: I beg to move that in clause 8 (*1*) (*c*) after the word "substituted," the word "and" shall be omitted, and the following shall be inserted, namely:—

"(*cc*) to sub-section (*3*) the following shall be added, namely:—
'Where there are more than one landlord, the fees should be transmitted to each co-sharer separately having separate collections in proportion to the respective shares.'"

The principle which underlies this amendment has been thoroughly discussed in this House, and I do not think I need say anything more.

Mr. F. A. SACHSE: Am I to understand that amendment No. 92 is being moved although No. 87 has been withdrawn, because they are exactly the same?

Mr. PRESIDENT: Amendment No. 87 was withdrawn, but not negatived. I have given the member an opportunity to move this motion, so that the House may have an opportunity of judging for itself whether it should be carried or thrown out.

Mr. P. A. SACHSE: The Act as it is now worded seems to mean that the landlord's fee should be transmitted to co-sharer landlords as well as to sole landlords, provided they are named in the notice. I admit it is not done, and I am not exactly aware of the reason, but I think because it has been found completely impossible. Landlords' fees are all nominal in amount, practically mutation fees only. There are many Muhammadan estates in the Mymensingh district in which there are 160 to 200 co-sharers. If every fee of one rupee or two rupees had to be divided into 160 or even 16 parts and sent separately, it becomes a farce. We have heard from the other side of the House

that it would not cost any more to send landlords' fees to 16 landlords than to 1. If there are 16 landlords there must be 16 money-orders, which must be dealt with in the Collectorate and the post offices.

5. p.m.

The tenants would have to pay a separate money-order fee on each one anna or part of an anna to be sent to different landlords. We have got a provision in section 49A for co-sharer landlords appointing a common agent to receive the landlord's fee or the landlord's transfer fee. If the co-sharer landlords will take the trouble of appointing a common agent, all the trouble will be gone. If they cannot take this trouble, they cannot expect specially sympathetic treatment at other people's expense.

The motion of Mr. Bijoy Prasad Singh Roy was then put.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order, Sir. The House has definitely permitted the Raja Bahadur of Nashipur to withdraw his motion No. 87 which related to sections 12, 13, 15 and 26C. This amendment is exactly an amendment to one of these clauses. I put it to you, Sir, whether, after you have permitted a member to withdraw an amendment on a particular clause, the same might be taken up again?

Mr. PRESIDENT: My decision is this: When the House gives a member leave simply to withdraw a particular motion, the reasons of withdrawal are not considered. So, when I find that a member wishes to avail himself of a later amendment, similar to the one which was withdrawn, I naturally feel that the safest course for me is to allow him to move it.

The motion being put, a division was taken with the following result:—

AYES.

Guha, Mr. P. N.
Roy, Mr. Bijoy Prasad Singh.
Sen, Mr. Satish Chandra.

NOES.

Abbott, Mr. E. G.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Blair, Mr. J. A.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Dash, Mr. A. J.
Drummond, Mr. J. G.
Eddis, Mr. A. McD.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ghose, Mr. M. C.
Gordon, Mr. A. D.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hug, Khan Bahadur Maulvi Ekramul.
Hug, Mr. A. K. Fazl-ul.

Hussain, Khan Bahadur Maulvi Syed Maqbul.
Hussain, Maulvi Latafat.
Ismail, Khan Bahadur Maulvi Muhammad.
James, Mr. F. E.
Karim, Maulvi Abdul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Luke, Mr. N. R.
Marr, the Hon'ble Mr. A.
Martin, Mr. G. S.
Mitter, the Hon'ble Sir Provash Chunder.
Momin, Khan Bahadur Muhammad Abdul.
Nazimuddin, Mr. Khwaja.
Nelson, Mr. W. H.
Parrett, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Rahim, Sir Abd-ur-
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Sarker, Rai Sahib Rebati Mohan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. O.

The Ayes being 3 and the Noes 52, the motion was lost.

The following amendments were called but not moved and, therefore, deemed to be withdrawn:—

Babu SACHINDRA NARAYAN SANYAL to move that in clause 8 in the proposed sub-section (*4*), after the words "prescribed manner" the words "and such Registering Officer or the Court or the Collector shall send the landlord's fee by postal money-order to the landlord" shall be added.

Clause 11.

Babu JATINDRA NATH CHAKRABURTTY to move that in the proposed proviso to section 15 in clause 11 (*2*), line 3, for the words "six months," the words "one year" shall be substituted.

Clause 14.

Khan Bahadur Maulvi EKRAMUL HUQ to move (1) that for sub-clause (*2*) (*i*) of clause 14 the following shall be substituted, namely:—

"(*i*) at the end of clause (*a*) the following shall be inserted, namely—'shall, on transfers of such holding, not be liable to pay any fee to the landlord, nor the holding itself, nor the transferee of the holding be liable for any fee and,'"

Khan Bahadur Maulvi EKRAMUL HUQ: I beg to move that for sub-clause (*2*) (*ii*) of clause 14, the following shall be substituted, namely:—

"(*ii*) In clause (*b*) the words beginning with 'except on the ground' and ending with 'liable to be ejected' shall be omitted."

Sir, I need not say anything, because there may be other members who would like to speak on the subject.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I rise to oppose this amendment. If this amendment be accepted, the result will be that no raiyats holding at a rent or fixed rent can be ejected by the landlord under any circumstances; or, in other words, if a raiyat at a fixed rent has been on the land on certain condition on the breach of which he is liable to be ejected under the terms of a contract between himself and his landlord, and if he violates the condition, even in those circumstances, the raiyat cannot be ejected, if the amendment before this House is accepted. Obviously, therefore, it does not require any other explanation why it cannot be accepted by the House.

The motion of Khan Bahadur Maulvi Ekramul Huq was put and lost.

Mr. A. K. FAZL-UL HUQ: I beg to move that in clause 14 (*2*), clause (*i*) of the proposed section 18 (*1*) (*b*) be omitted.

In support of the suggestion contained in this amendment I will make as few observations as possible. On a comparison of the suggestion made in the amending Bill with the provision of section 18 as it originally stood, it would appear that the only ground on which a raiyat holding at a fixed rent could be ejected was clause (*b*) which is proposed to be deleted from the Act, namely, that he shall be liable to be ejected only on having broken a condition consistent with this Act and on breach of which he is under the terms of a contract between him and his landlord liable to be ejected.

Now, Sir, by the amending Bill, another clause of forfeiture is sought to be introduced, and it is this—that a raiyat shall be liable to ejectment if he uses the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy. The Council will be pleased to bear in mind that as regards raiyats holding at fixed rates of rent, there are two classes, *viz.*, first those who were raised to the status of tenants by virtue of contractual relationship with the landlords, and, secondly, others who were raised by reason of their holding the land for a considerable period of time, since the permanent settlement. It may possibly happen that at the time when the landlords let out the lands to their raiyats, there might have been some lands which were not fit for cultivation but which became subsequently fit for cultivation. Supposing the tenants used the land in a manner which was not contemplated by the parties at the time when the tenancy was created, the landlord might say that the conditions had been broken and, consequently, the tenant would be liable to ejectment. I think that it will be a very harsh condition to impose for the purposes of the tenancy: and that it is a ground for ejectment of the tenant which did not exist before. No case has,

I think, been made out why this privilege should be conferred on the landlord. With these few words I submit this amendment to the consideration of the House.

Khan Bahadur Maulvi AZIZUL HAQUE: Of the dangers that are threatening the Bengal Tenancy Act this is the first which is a very important factor. It goes very deep and goes to the root of many questions which are involved. May I remind this House that it wants for the first time that a man who has got a fixity of tenancy, namely, a raiyat holding at the rate of rent fixed in perpetuity, will have many of his rights jeopardised. In the year 1885 one attempt was made in the Imperial Legislative Council to introduce a clause like this, a clause exactly similar to the one that has been put forth to-day on behalf of Government. It was moved that a raiyat with a fixed rent or a rate of rent fixed in perpetuity shall be liable to be ejected on the ground that he has used the land comprised in his holdings in a manner which renders it unfit for the purposes of the tenancy. That attempt was made in the year 1885, and I cannot do anything better than quote from official reference. Mr. Reynolds opposed this clause on behalf of Government. The facts exactly stand to-day in the same position as they stood in 1885. I can at once tell the House that that clause was rejected in the year 1885. Curiously enough, we find Government putting forth in the amending Bill the addition of this clause. The Hon'ble Mr. Reynolds said:—

"I should be sorry to see the words introduced, because I understand that the recognized status of a raiyat holding at fixed rates of rent is for all practical purposes that of a tenure-holder and not of a raiyat. You may trust him perfectly well not to use the land in such a manner as to render it unfit for the purpose of the tenancy, this interest is very much against his doing so. He may use it for a purpose incompatible with a purpose for which it was let to him, but I really do not see why we should interfere so long as the security for the rent is not endangered..... As the amendment stands, the clause would have the effect of harrassing and molesting the tenant."

Sir, in 1885 the clause was rejected, and to-day when we have so many representatives on behalf of the people, Government has made another attempt to bring in that clause. I may remind the House that in the original Bill of Sir John Kerr this clause did not find a place. It was introduced in the Select Committee for reasons which cannot stand scrutiny even for half a second. What is the danger in this clause? You know that municipal areas are governed by the provisions of the Bengal Tenancy Act, unless they are excluded. Now, the development of municipal areas means the transfer of certain agricultural holdings to non-agricultural purposes. It is necessary in the larger interests of the country that there should be development of urban areas and rural areas. Take the case of the Garden Reach

Municipality, take the case of Manicktolla Municipality or of any municipal area near about. What will be the effect of this legislation? Its effect will be that the tenants will be at the absolute mercy of the landlords. The moment a tenant constructs a building upon the land, his life will be in danger. Possibly, my friends will say that that is an improvement for the purposes of the tenancy. I may tell you that supposing the building is constructed by the tenant not for his own purpose but for the purposes of a factory or for the purpose of letting it out to others, at that very moment the landlord will come down upon him and will say that he has used it for a purpose which is not consistent with the purpose of tenancy. I consider that it will mean that in all these areas all the people who have got mokurrari rights and which give them a permanent advantage will have to pay a large amount of salami to the landlords in order to enable them to stay on the lands. Surely, it is not intended that unearned increment so far as mokurrari tenancies are concerned in urban areas should entirely go to the landlords. That will be a breach of faith on the part of Government, because I find that these tenancies or most of them have been existing before the time of the permanent settlement. The gentlemen in the House will pardon me if I go in greater detail into this matter.

It says "holding at rents fixed in perpetuity." How can a tenant have a right? He can have it by two ways—either by contract, or by the presumption under section 50 of the Bengal Tenancy Act. Now, Sir, I will remind the House that so far as the question of section 50 is concerned, it is purely a question of procedure, and no right was created thereby; simply because the tenants in most cases were not able to show how a tenancy was created by documents of title, a procedure was introduced, viz., the procedure in evidence. If a man could satisfactorily prove that he has held the land for a period of 20 years, he will be supposed to have been holding, for all purposes, a mokurrari tenancy, a right from the year 1793. Once you concede that that is right, you will feel that these rights which have been existing since 1793 will at once be jeopardised. I, therefore, submit, Sir, that whatever may be the views regarding occupancy raiyats, the people who have got their rents fixed in perpetuity should not be allowed to have their rights jeopardised in this way. Sir, I would remind you once again that not only in the case of a building but if a tenant excavates a tank, the landlord will at once come down on him and say: "You cannot violate the purposes of the tenancy." As I have told you, Sir, so far as this section is concerned, it is an addition which will mean the taking away of the rights of most of the tenants of this country. You know, Sir, that in municipal towns considerable developments take place on account of social amenities. The result will be that if anything else than a building for the tenant is constructed, the landlord will come down on the

tenant. I myself do not yet understand why this provision has been brought in. It will mean for the first time, that in spite of the admission of Government that the landlords have not been doing their duties, i.e., they have failed to discharge their duties, Government want to make a further present of unearned increment to the landlords. I do not think that it is the intention of the legislature. Possibly, it will be argued why should the land be so used as to be made unfit for the purpose of the tenancy. In many instances, queer language has been used in the Tenancy Act, and one of the queerest language used is to say—" to make it unfit for the purpose of the tenancy." What is considered by one as making it unfit for the purpose of tenancy is not so according to another. You will find that as a result, litigation will prosper if this clause be added. It will mean that a tenant who does a thing for the improvement of his tenancy will have his rights jeopardised. Therefore, in the interests of the development of the country and in the interests of the tenantry, I think this provision should not be allowed to stand in the Bill, and I therefore support its deletion.

Mr. F. A. SACHSE: Sir, it is true that this ground of ejectment for the reason that the raiyat uses the land comprised in his holding in a manner which renders it unfit for the purpose of the tenancy does not apply at present to mokurrari raiyats, i.e., raiyats holding at fixed rates of rent. It has always applied to occupancy raiyats. This provision was introduced in the Bill by the Select Committee; it was not in the Bill which Government prepared. It has been introduced for the reason that, according to the Select Committee, it is already the general law. The general law is that if any tenant uses his land in a way which, when the lease was made, was not intended, then the tenant is liable to be ejected.

Now, Sir, it must be remembered that there are two distinct classes of raiyats at fixed rates. There are those who have obtained their rights by contract, or because they have been holding the land since the permanent settlement, and there are those who have got the right by statute, i.e., under the provisions of section 50 of the Bengal Tenancy Act—numerically, the latter are by far the most important. If a raiyat happens to be able to produce dakhilas showing that his rent has not been increased for 20 years, he becomes a mokurrari raiyat. If a raiyat happens to be under a mild landlord who has not increased the rent at intervals of 15 years, then the raiyat obtains this very valuable privilege. On the other hand, if a raiyat happens to be under a landlord who has enhanced the rent frequently, and possibly illegally, the raiyat does not attain this privilege. The contrast is a very poor reward to the mild landlord for obeying the law as regards illegal enhancement, and rent receipts. Not only has he to

concede to his tenant the right to remain on at the same rent for ever, but he has to give him the right to remain on if he converts the land with a factory or a brickfield.

5-30 p.m.

That, Sir, I think, is the only justification for the inclusion of this clause in the Bill. The great majority of raiyats who attained the status of mokurari raiyats by statute are really occupancy raiyats. And in the case of occupancy raiyats the law is perfectly clear, viz., that an occupancy raiyat can be ejected if he uses the land for non-agricultural purposes. As the law in the case of occupancy raiyats has always given the unearned increment to the landlord, there is no particular reason why the same law should not be applied to those occupancy raiyats who, almost by accident one might say, had been recorded by settlement officers as mokurrari raiyats. It is true that we are taking away an old established privilege from a certain number of mokurrari raiyats. But I think, most of them are protected by their contrasts with the landlords. If the landlord has made a contract giving a mokurrari raiyat the right to remain on the land for any purpose he likes, then he will not be affected by this change. It is possible that we might have divided the raiyats on fixed rates into two classes and might have provided different rules for ejectment, but I think that this would have led to unnecessary complications of the law. Whether the unearned increment should go to the landlord or to the tenant is a big general question which it is for the House to decide. Sir, I hope I have explained the reasons why Government have included this provision in section 18 of the Act.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I desire just to say one word with regard to this amendment. This amendment refers to sub-clause (*i*) of clause (*b*) of section 18. It is obvious that this was inserted by the Select Committee for the purpose of meeting cases of those tenants and raiyats who have acquired their status by virtue of the presumption under section 50. There is no contract with regard to the relationship between the tenant and the landlord, and it is presumed by the Court that the tenant holds his land at a fixed rate when it is shown that he is holding the land on an unchanged rate of rent for a fixed time. It is only to meet cases of such tenants that clause (*i*) was introduced by the Select Committee. Now, Sir, even without this clause (*i*), the general law as it stands is, perhaps, this: That if a raiyat holding at fixed rates uses the land in such a way as to make the land unfit for the purposes of the tenancy, the law would intervene. (Question, question.) My friends may question, but I would refer them to one reported case—9, Calcutta: Girish Chandra *versus* Sirish Chandra—where it was held that even in cases of permanent lease, the raiyat had no right to make excavations of such a character as to damage the land. Sir, on that view this law was

introduced. You will find, Sir, that some members of my party also had tabled this amendment, but they are not going to move it in consequence of the fact that there is another amendment, viz., amendment No. 105, tabled by Khan Bahadur Maulvi Ekramul Huq, which will be supported by them. That amendment is that if clause 14 (2) (b) be not omitted, then after the word "which" in proposed clause (b) (i), the words "has substantially reduced the value of the holding and" shall be inserted. If we have this, then it will not be necessary to delete clause (i) of the proposed section 18 (1) (b).

Mr. M. ASHRAF ALI KHAN CHAUDHURI: Sir, I support this amendment for this reason: If the new inclusion be not omitted, the effect will be that the real cause for which this Act is now being amended will be gone. The real reason for which the Act is being amended is that the tenants may, if they desire, dig tanks, erect buildings, and so on, on the land they hold, but if we allow this new inclusion to be made, the effect will be that as soon as a tenant digs a tank or erects a building, he will be liable to be ejected. The root cause for the amendment of the Bill will be gone. Mokurrari right is a better right than occupancy right, but if you allow the new clause to come in, then it will be worse than occupancy right, because in the latter case we allow the tenant to dig tanks and to erect buildings on the land he holds. So I say the inclusion of this new clause will be against the spirit of this amending Bill.

Sir ABD-UR-RAHIM: Sir, this Council—the majority of this Council that is to say the Government and its supporters, in combination with the big Swaraj Party, have already finished with the bargadars who are the real cultivators of the land.

Mr. PRESIDENT: May I appeal to you, Sir Abd-ur-Rahim, not to cast any reflection on any party or person in the course of this debate?

Sir ABD-UR-RAHIM: I am only speaking of the result of the amendment regarding bargadars how it has been brought about. I submit that the conduct of a certain section of the House has led to this result. Now this powerful combination, which it is not possible for those who have taken up the cause of the raiyats to combat successfully, has begun by taking away the rights of the raiyats. One of the most important class of raiyats are those who hold the land at a permanent rate of rent and who enjoy certain privileges—valuable privileges as Mr. Sachse has admitted Mr. Sachse has admitted that by the inclusion of this clause all these privileges will be taken away. And why? The only excuse put forward is that the last Committee recommended its inclusion. Sir, time after time, we have been asked

to place reliance on the recommendations of the Committee. Why? Because one of the members happened to be a Judge of the High Court. I ask the House, Sir, is that a valid reason? If Sir Nalini Ranjan Chatterjee is a great lawyer, if he has such a great experience of the law on tenancy, if he.....

Mr. F. A. SACHSE: On a point of order, Sir. Sir Nalini Ranjan Chatterjee was not a member of the Select Committee. I was referring to the Select Committee of the House.

Sir ABD-UR-RAHIM: I am sorry Sir. I then withdraw my remarks. But what I say is this—Select Committee or no Select Committee, the measure, on its merits, is absolutely iniquitous. It takes away valuable rights from a class of men for no reason whatsoever. What have they done? Have they committed treason. What right has the Council to take away anybody's rights? You are going to take away valuable rights from a class of men without providing any compensation, without pretending to provide for any compensation. Is the Council here for taking away rights of the people? I am emphasising this now because at a later stage we may feel compelled to withdraw from the Council if peoples' rights are taken away like this.

Dr. BIDHAN CHANDRA ROY: We will follow you.

Sir ABD-UR-RAHIM: I hope you will, and then you will be in good company.

Sir, what is the position? If these settled raiyats have been holding the lands from time immemorial according to law—or if anyone holds land for 20 years, he will be presumed under the law to be holding it from time immemorial—what right has the landlord to come down on him in 1928 and say: "Oh! You shall be ejected, because the use you are making of the land is not in accordance with the purposes of tenancy." Look at the disastrous effect that will be produced on the economic development of the country, as Khan Bahadur Maulvi Azizul Haque has so well pointed out. Look at the suburban areas of Calcutta. They are all agricultural lands, and they cannot be developed if the landlords stand in the way. Because, directly the tenant uses his land for the improvement of the suburban area, the landlord will come down upon him and say "you cannot do it," and the result will be that heavy fees will be imposed and the improvement of the town will be obstructed. We have got large suburbs outside Calcutta. Lots of lands there are—agricultural lands. These are held under mokurrari rights and have been so held for years together—from time immemorial. What right has the landlord now to come down on him and say: "You shall be ejected if you improve

your land for the purpose of erecting buildings." If he gets his settled rent according to contract, what right has he to deprive the tenant of this privilege? Sir, the Committee presided over by Sir John Kerr—there were very few men in the Council Service of Bengal who knew the tenancy law better—would not have a provision like this, and even in 1885, as pointed out by Khan Bahadur Maulvi Azizul Haque, the very same question was raised and the amendment of the law, as now proposed, was rejected. The most experienced officers of the Government protested against it, because they thought that it would seriously affect the economic development of the province. I submit that there is absolutely no sense of justice in taking away this privilege from men holding under a contract and who have been holding the land from time immemorial. As I said yesterday, you ought not to take away the existing privileges of the tenants. The Council by a majority have already done so in the case of one class of men, because they are poor and helpless. Now, the privileges of another class of raiyats are going to be taken away. This is a proposal which ought not to be accepted.

[5-45 p.m.]

Khan Bahadur Maulvi EKRAMUL HUQ: I rise to support the motion. The house knows that the clause we are discussing now was not to be found in the report of the Select Committee over which Sir John Kerr presided. It is strange, Sir, that it was left to a brown bureaucracy to insert this section. Sir John Kerr was a Scotsman and, naturally, he was expected to protect the rights of the people, but we see here so many Britishers who played and are playing the second fiddle to the brown bureaucracy of zamindars who presided over the Committees which inserted this section. I may be permitted to say that it was the duty of these Government members to have come out of the Committee and to have refused to be a party to an amendment that would injure the rights of tenants. By not doing so, they have disgraced the British Nation. I was glad to learn, Sir, that there was at least one Englishman—a High Government servant—who refused to go into the lobby on a question which vitally concerned the interests of the tenants and was against their interests. He has honoured himself and, through him, the British nation will be remembered. If the British members of the Committee had refused to sit on the Tenancy Amendment Bill they would have done the best and just thing and would have been remembered by succeeding generations for centuries to come. There is another point, Sir. Now that the British members who are present here have come to know that this Bill is the handmaid of our own countrymen the brown bureaucrats, and some of their countrymen were only pliant tools, all of them, they should take courage in both hands and stand up and say that they will support this amendment and oppose the introduction of the proposed

clause which has been placed on the statute book under the guidance of the Hon'ble Sir P. C. Mitter. With these words, I again appeal to my friends to rise as one man and support the cause of the agriculturists, the cause of the masses which is, in fact, the cause of this unhappy country.

Mr. A. K. FAZL-UL HUQ: I take my stand upon the admission which has been generously made by Mr. Sachse and to which reference has been made by Sir Abd-ur-Rahim that the provisions that are sought to be introduced by this Bill will take away the vested rights of a large number of tenants. I ask the House to consider seriously whether this Bill to amend the Tenancy Act is meant to enlarge the rights of tenants or to curtail those rights? Are we here to take away the rights of tenants by amending the Tenancy Act, or are we to enlarge and improve those rights? If the object of this amending Bill be to do away with the rights of the tenants, it is better, Sir, that we should have nothing to do with the Bill and do things which will redound to the disgrace of members of this Council for generations to come. My friend, Babu Jogindra Chandra Chakravarti, has generously come forward to point out that he will support some of our amendment where the standing practice will not be materially altered. I submit, Sir, the question of tenure is a very important question which this House will have to take into consideration in this connection. In the first place, whether the act of a tenant violates the conditions on which the tenancy is held and paid for, cannot be defined and has been left to the discretion of the Courts to decide. In the second place, whether a particular act does or does not materially impair the terms of tenancy is also an expression which is beautifully vague, and is also left to the discretion of the Courts to decide. In these circumstances, provisions of this character will throw open the flood gates of litigation and the rights for the safeguard of which this motion has been introduced by Khan Bahadur Maulvi Ekramul Huq will be of an illusory character. It will be for the landlord to drag his tenants to Court, and it will be for the tenant to show that whatever he has done on his holding has not materially improved it.

Khan Bahadur Maulvi EKRAMUL HUQ: May I rise to a point of personal explanation: Mr. Fazl-ul Huq has characterised my motion as illusory, and that the amendment made therein would not give substantial benefit to the tenants. But I beg to point out that I moved a similar amendment to that moved by Mr. Fazl-ul Huq in which I wanted some substantial rights given to tenants but as it was not accepted by the Council, I had, as a matter of necessity, to move that one to secure what little rights I could for the tenants.

Mr. J. M. SEN GUPTA: Sir, it is unfortunate that I was not in this House yesterday most of the time and also for some time to-day.

I have been informed that it has been suggested by some of the members with whom we have worked side by side and have taken decisions in this House jointly—I have been told that such members have said in their speeches that the Congress Party to-day is not standing justly for the rights of the poor men, that the Congress Party to-day has gone over to the side of the zamindars. I was surprised a few minutes ago to find that Sir Abd-ur-Rahim, for whom I have the greatest respect, introduced a tremendous amount of heat in his speech when he was referring to the Congress Party. The attitude that the Congress Party have taken is in consonance with their election manifesto, namely, that so far as the relations between the landlord and tenant were concerned they would see that justice was done, so that neither the one nor the other was in the slightest way injured. They would see that during their fight for freedom, and until this fight for freedom was over, the interests of the tenants and the interests of the zamindars should be so adjusted—so reasonably adjusted—as not to create a civil war in the country before freedom was gained. Sir, I am not here to-day to lead my party in such a way as to be told or to be charged that the Congress Party was forgetting the interests of the tenants.....

Mr. A. K. FAZL-UL HUQ: May I rise to a point of order, Sir? Is it relevant? Sir, you ruled when Sir Abd-ur-Rahim was making a statement that no kind of personal reflection or personal element should be introduced in the speeches. Are we to listen to the defence of the Congress Party, or are we to go on with the discussion of the amendment that is now before the House?

Mr. PRESIDENT: Mr. Fazl-ul Huq, I am sorry to say that Sir Abd-ur-Rahim cast my appeal to the wind, and you yourself violated the principle you are now advocating. But I quite appreciate what you say, and I strongly feel that it would not be proper for any member to drift away from the subject before the House. But Mr. Sen Gupta being the leader of the party which was attacked, I think I should give him some latitude, but I advise him to be very brief so far as his defence goes.

Mr. A. K. FAZL-UL HUQ: For a defence of his party he has the columns of *Forward* open to him, but we have not any such thing. We have got no newspaper.

Mr. J. M. SEN GUPTA: Sir, the last person from whom I should have expected any opposition to this explanation was Mr. Fazl-ul Huq. He is one of those members who, I heard when I just came into the House, had attacked me and my party for voting in a particular way. and when I was sitting here Sir Abd-ur-Rahim, who is the leader of

the Moslem group, had attacked the Congress Party. I do not submit that when I am speaking on the amendment, you will allow me to clear the air and express to this House as well as to the people outside that the Congress Party is absolutely sticking to a line which is neither antagonistic to the tenants nor to the zamindars. They are looking to the reasonable interests of the tenants and also to the reasonable interests of the zamindars so far as they are consistent with the interests of the nation. (Question, question.) I hope, Sir, that you will allow me a few minutes to prove that if the Congress Party were to-day with the zamindars then this Bill in which provisions have been made for the giving of the right of transferability to certain classes of tenants—those provisions would be rejected. We could have supported the zamindars, but we are not going to do that. There is another point to which I may refer in passing. We know that there is a provision in the Bill to the effect that certain tenants should be given the right of digging tanks, of building pucca structures, cutting trees and certain other rights. We are not going to oppose these provisions, because these would confer reasonable rights on the tenants. If we did oppose them, if we but expressed our desire to oppose them, then the landlords would be here to seek our support and try to reject those provisions. There are other provisions in the Bill which will come up for discussion, and I have no doubt that the public would judge whether we are sticking to our policy enunciated in our election manifesto.

So far as this particular amendment is concerned, I may say that three members of our party including Babu Naliniranjan Sarker, the Secretary, had given notice of this identical amendment as you see in the Agenda paper, and I may tell my hon'ble friend, Sir Abd-ur-Rahim, and his followers that having regard to the explanation which Mr. Sachse has given that the introduction of this new clause by the Select Committee makes a new departure and does interfere with the present rights of certain people, we as a party have decided to abide by our original decision which was that Babu Naliniranjan Sarker, the Secretary, should move an amendment like this.

6 p.m.

We as a party have decided to stick to our original decision that Babu Naliniranjan Sarkar, as Secretary of the party, should move an amendment like this, and we will support this amendment. Sir, the bona fides of the Congress Party is proved by this very action we are taking under the power that has been given to me to take any action on the floor of the House when I am convinced that anybody's legitimate interest, are hurt—be he a tenant or a landlord, we do not care. The proper thing would be to support this amendment rather than mutilate it by another amendment, No. 109. We are going to support this amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: The atmosphere of the House is so electric, and so much passion has been aroused to discuss the question as to whom the rights belong to that I find it rather difficult to go into the question in the spirit in which it should be discussed. Sir, I may say at once that I emphatically repudiate the charge that has been brought against Government, viz., that it was the intention of the Government to take away any vested rights. That never was the intention of the Government and that never is the intention of Government. Mr. Sachse has given a brief resumé of the history of this clause. I would remind the House what I have said more than once, but in spite of my statement, I find some of my hon'ble friends, like Khan Bahadur Maulvi Azizul Haque, go on repeating as if this Bill is my Bill, as if I took the first step in drafting this Bill. I may say at once that this Bill is the result of information obtained from Committee after Committee. Well, Sir, that is the position; and, therefore, if this clause finds a place in this Bill, it was because Government was advised that it ought to find a place. There is one important point raised by my esteemed friend, Sir Abd-ur-Rahim, about which I should like to say a few words, and that important point is as to whether, by this clause, we are taking away any vested rights. Whatever the decision of the House may be, we, on the Government benches, are indifferent; but it is my duty to justify what is there in the Bill, if I feel it can be justified, and I submit that what is in the Bill can be justified. The question really hinges round this: Does it render it unfit for the purposes of the tenancy? Now, Sir, there are many lawyer members of this House, and I am putting this to them: Suppose a building is let out for a residential purpose for a term of 10 to 20 years, and if that house, instead of being used for a residential purpose, is used for a different purpose, say for a factory or storing of goods, I am sure Sir Abd-ur-Rahim will agree with me that if it is used for a different purpose, then an implied covenant is broken. I do not want to assert that the conclusion embodied in the Bill is necessarily right or necessarily wrong. All that I want to make out is that it was a reasonable conclusion on the part of the Select Committee and on the part of the Special Committee on which there was an eminent Judge. It is true that a raiyat at a fixed rent is a mokurrari raiyat, but what does the word "raiyat" imply? The word "raiyat" implies that he is an agricultural tenant, and if an agricultural tenant uses the land for a non-agricultural purpose—supposing if he raises a mill or a manufactory on agricultural land—does he or does he not break an express or an implied covenant?

Sir ABD-UR-RAHIM: Then let that section remain as it is.

The Hon'ble Sir PROVASH CHUNDER MITTER: I thank Sir Abd-ur-Rahim for his question, and he is perfectly right in saying

"let the section remain as it is." According to those who took the other view they thought that, if the section remained as it was, even then an agricultural raiyat who used the tenancy for a non-agricultural purpose could be ejected. Then the question may be asked: Why did you introduce this? Those who advised the introduction of this section thought that it was better to settle the law and they only made—at any rate that was the intention—a statutory declaration. That was the reason why this was embodied in the Bill, and the effect of the amendment, if accepted or deleted—speaking entirely from my own personal point of view, we have not consulted the Advocate-General or other Law officers won't matter at all one way or the other. But since a doubt has been raised, we, on the Government benches, propose to remain neutral. One word more and I have done. If the House accept the amendment, we shall welcome it, because that will remove a cause for suspicion.

The motion that in clause 14 (*2*), clause (*i*) of the proposed section 18 (*1*) (*b*) be omitted, was then put and agreed to.

Maulvi SYED NAUSHER ALI: On a point of order, Sir. No closure was moved when we rose to speak and, in the circumstances, I submit that we should be allowed to speak on the motion.

Mr. PRESIDENT: It is not a point of order. When the President finds that the matter has been fully discussed, it is in his discretion to put it to vote.

Maulvi SYED NAUSHER ALI: This very amendment stood in my name and I wanted to speak. So is it right on your part to put the motion to the House without giving me an opportunity to speak.

Mr. PRESIDENT: If you missed you opportunity when it came to you, you could not blame anyone but yourself for it. What I find is that amendments from No. 97 to No. 102 have been carried. Numbers 103 and 105 do not arise, because the clause in question has been altogether washed away.

The following motions were, therefore, not put:—

Babu AMARENDRA NATH GHOSE to move that in clause 14 (*2*) (*ii*) in proposed clause (*b*) (*i*), lines 3 and 4, for the words "for the purpose of the tenancy," the words "and deteriorates its value" shall be substituted.

Khan Bahadur Maulvi EKRAMUL HUQ to move that in sub-clause (*2*) (*ii*) of clause 14, in proposed clause (*b*) (*i*), line 2, after the word "which," the words "has substantially reduced the value of the holding and" shall be inserted.

Maulvi NURUL HUQ CHAUDHURI: On a point of order, Sir. We want to know as an information and for our guidance.....

Mr. PRESIDENT: That is not a point of order.

Khan Bahadur Maulvi EKRAMUL HUQ: I move that proposed clause (*b*) (*ii*) in sub-clause (*2*) (*ii*) of clause 14 shall be omitted.

I find a welcome change in the attitude of this House, and I must congratulate the leader of the Swaraj Party for the step he has taken in assuring the House that he was alive to the interests of the tenants and also of the zamindars, and that he and his party—mark the word "party"—will support the amendment of Mr. Fazl-ul Huq. But my friend Babu Jogindra Chandra Chakravarti of the Swaraj Party who spoke before his leader said that he was going to support amendment No. 105 which is quite a different and a milder amendment in accordance with the decision of the party he belongs to. I do not know which version is correct—the version of the leader of the Swaraj Party or a member of that party. Let us hope that we shall be able, with the help of the Swaraj Party, to carry this and all other amendments in favour of tenants.

Mr. PRESIDENT: Order, order. It is absolutely impossible for me to conduct the debate if reflections are cast by members against each other in this way. I must condemn such an attitude.

Khan Bahadur Maulvi EKRAMUL HUQ: No more on the point, Sir, and I have finished my speech.

Babu BEJOY KRISHNA BOSE: On a point of order, Sir, my friend, Khan Bahadur Maulvi Ekramul Huq, did not move the amendment at all. The Secretary was talking with you, Sir, and my friend forgot to move his amendment.

Khan Bahadur Maulvi EKRAMUL HUQ: No, I moved the amendment first before I took up the other matter.

Mr. PRESIDENT: I rule Mr. Bose out of order and accept your statement.

Mr. F. A. SACHSE: This clause which it is proposed to omit is not at all on the same footing as clause (*b*) (*i*). This clause has always been in the Tenancy Act. No ground has been shown for the omission of the clause. As far as I know, it is very seldom used. I submit, Sir, the reasons for its omission are not at all convincing. I, therefore, oppose the amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, by a curious mistake I find it has been printed in the List of Business that I am also to move this amendment. As a matter of fact, I want to oppose this. (A VOICE: "Perhaps that is a printer's devil.") I know the printer's devil is responsible for many things. However, I oppose this amendment for the simple reason that it will mean a new departure in the history of the law as if we want contractual obligations to be set at naught. Surely, that cannot be the intention of the present legislature.

The motion of Khan Bahadur Maulvi Ekramul Huq was then, by leave of the Council, withdrawn.

The following motions were called but not moved, and therefore deemed to be withdrawn:—

Mr. ALTAF ALI to move that in clause 14, from the proposed section 18 (*b*) (*ii*) the following be omitted, namely:—

"and on breach of which he is under the terms of a contract between himself and his landlord liable to be ejected."

Mr. BIJOY PRASAD SINGH ROY to move that in clause 14 in clause (*b*) (*ii*) in the proposed sub-section (*1*) in section 18 for the words "and on breach," the words "or on breach" shall be substituted.

RAI SATYENDRA NATH ROY CHOUDHURI Bahadur and Mr. BIJOY PRASAD SINGH ROY to move that in clause 14 (*2*) (*ii*)—

(*i*) the word "and" at the end of clause (*b*) (*ii*), and

(*ii*) clause (*c*)

shall be omitted.

Mr. A. K. FAZL-UL HUQ: I give notice of the next motion.

Mr. PRESIDENT: Do you wish to move it?

Mr. A. K. FAZL-UL HUQ: I wanted to say something. After making my statement I shall decide whether I shall move it.

Mr. PRESIDENT: Mr. Huq, I cannot allow you to do that. In any case, you can give an explanation. I would, however, ask you to state at the outset whether you are going to move it or not.

Mr. A. K. FAZL-UL HUQ: Then, Sir, I am afraid I am not going to move it.

The following motion was not moved, and therefore deemed to be withdrawn:—

Mr. BIJOY PRASAD SINGH ROY and Mr. A. K. FAZL-UL HUQ to move that clause 14 (*3*) be omitted.

The following motion was called, but not moved, and therefore deemed to be withdrawn:—

Babu ROMES CHANDRA BAGCHI to move that in clause 14 (*3*), in proposed sub-section (*2*), in line 1, for the figures and letter "23A," the figures "27" shall be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: If you will permit me, Sir, I would point out a certain complication which has arisen in the Bill.

Mr. PRESIDENT: When I called upon the mover, Mr. Bagchi, he did not move it. So I do not understand your position. Is it on a point of order that you desire to speak?

Khan Bahadur Maulvi AZIZUL HAQUE: It is a point of information which I would like to have before I decide whether I would move the amendment myself.

Mr. PRESIDENT: I have already declared that this amendment was not moved. So it is no longer before the House.

Khan Bahadur Maulvi AZIZUL HAQUE: In view of the fact that a certain complication has arisen in the Bill, I think, Sir, you will permit me to make a statement.

Mr. PRESIDENT: I think you are too late. I have already passed over the amendment you have in view. It was not moved and no remarks on that can now be permitted.

Khan Bahadur Maulvi AZIZUL HAQUE: With your permission, Sir, I would like to point out a certain difficulty which has arisen in the Bill.

Mr. PRESIDENT: I do not think that you can at this stage speak on any amendment when you are not moving the amendment yourself.

Mr. J. H. NELSON: I rise on a point of order, Sir. Amendment No. 116 is out of order.....

Mr. PRESIDENT: Is it out of order because it requires the previous sanction of the Governor-General?

Mr. J. H. NELSON: No, Sir. But it is out of order because, it amends sections which are not being amended.

Mr. PRESIDENT: I thought you would say that this amendment could not be moved, unless the sanction of the Governor-General was obtained. In any case, it requires sanction.

Mr. J. H. NELSON: The point of order is that this is an amendment to sanctions 27 to 38 of the Act, and these sections are not being touched in the present Bill. Therefore, I submit that even if we get the sanction we cannot deal with it.

Mr. PRESIDENT: That means that the sanction would never come. (Laughter.) I think Mr. Nelson's point is correct, and I rule the amendment out of order.

The following motion was not put:—

Maulvi NURUL HUQ CHAUDHURI to move that in clause 14 (*3*) after the proposed sub-section (*2*) in section 18, the following sub-sections shall be added, namely:—

(*3*) The provisions of sections 27 to 38 (both inclusive) shall not apply to raiyats having rights of occupancy, provided that they have held the lands as occupancy raiyats for a continuous period of 20 years whether at fixed rates or not, and such raiyats shall be deemed to be raiyats holding at fixed rate.

(*4*) For the purpose of sub-section (*3*) above, a raiyat shall be deemed to have continuously held as an occupancy raiyat any land held as an occupancy raiyat by a person whose heir, vendee or donee he is, and he shall be deemed to have been in possession during the period when he was illegally kept out of possession, provided that he has since recovered possession.

Clause 15.

Maulvi SYED NAUSHER ALI: I beg to move that in clause 15 the proposed section 18A be omitted.

Sir, it is not necessary to make a speech. I will just read out the amended section which says:—

"Notwithstanding anything contained in section 13 of the Indian Evidence Act, nothing contained in any instrument of

transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount, or fixity of rent, the area, the transferability, or any incident of any tenure or holding referred to in such instrument."

It is apparent on the face of this section that a departure has been made in favour of the landlords so far as the Indian Evidence Act is concerned. It means that certain documents, which are admissible in evidence under the Indian Evidence Act, are being excluded by the operation of this section. There is no earthly reason whatsoever why there should be a departure made in favour of the landlords from the general law of the land. It is well known to every lawyer that under section 13 the instruments may in some cases be admitted in evidence as against the third party, in this case the landlord. In fact, there seems to be no reason for the insertion of the section: "Notwithstanding anything contained in section 13 of the Indian Evidence Act, etc."

Now, Sir, coming to the point at issue, we have heard enough about protection being given to the tenant, and so on. But here is a provision which departs from the general law of the land in favour of the landlord. We have already found, when discussing other amendments, that there is a section of this House which tried to take away the rights of the bargadars and exclude evidence which would otherwise have been admissible under section 18 of the Indian Evidence Act. Of course, if an attitude like that be taken up, we shall be quite helpless, and we shall be defeated. As I have said, I have not been able to find any reason for this departure from the general law of the land. With these remarks, I move the amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: My friend, Maulvi Syed Nausher Ali, has roused himself to such a state of passion that, perhaps, he omitted to notice that this is merely a drafting amendment. It is nothing new. If he will take the trouble of looking at the existing law in Eastern Bengal and Assam (he will find section 18A of the Eastern Bengal and Assam Act on the right hand column) he will see that 18A of the amending Bill is just the same as the provision in the Eastern Bengal and Assam Act. So, as I have said, it is not new, and it has been in existence for about 20 years in Eastern Bengal and Assam. Of course, if my friend still thinks that it was put in by us in an anti-tenant spirit, it may be possible for him even now to overlook the identity of the two drafts.

Maulvi NURUL HUQ CHAUDHURI: After hearing the elaborate arguments on behalf of the Government, I am not sure whether the Government has a conscience. The Tenancy Bill is the parting kick

of the bureaucracy against the people of Bengal. One by one all the rights of the tenants are going to be taken away. The rights of the raiyats, the rights of mokuraridars and of tenure-holders are all going to be taken away, and there will be one thing left.....

Mr. PRESIDENT: Would you try to wind up your speech? It is just a minute to six-thirty, and I shall have to adjourn the Council after one minute.

Maulvi NURUL HUQ CHAUDHURI: Sir, I think that an amendment of the law of evidence as it stands in this country should not be allowed to be made in this manner in the interests of any class of people, whether they happen to be landlords or tenants. As the matter stands, it is a negation of the principles upon which we have been acting in the Courts of law.....

Khan Bahadur MUHAMMAD ABDUL MUMIN: I submit, Sir, that the law stands to-day as it stood 20 years back.

Maulvi NURUL HUQ CHAUDHURI: If that be the general law of the country, I cannot understand why the Government of this country—in the interests of a particular class—seeks to modify, or has sought to modify, or has modified the Act.

The motion of Maulvi Syed Nausher Ali was then put and lost.

Adjournment.

The Council was then adjourned till 3 p.m., on Thursday, the 16th August, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Thursday, the 16th August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, and 117 nominated and elected members.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

Mr. PRESIDENT: We begin with 120.

Babu JITENDRALAL BANNERJEE: Amendment No. 119 has not yet been called.

Mr. PRESIDENT: That requires previous sanction.

Babu JOGINDRA CHANDRA CHAKRAVARTI: This amendment was put in under a misconception. I will not move this.

The following amendment was not moved and therefore deemed to be withdrawn:—

"**Babu JOGINDRA CHANDRA CHAKRAVARTI** to move that clause 16 be omitted."

Mr. A. K. FAZL-UL HUQ: I beg to move that clause 17 be omitted.

I move not because I want to raise any issue about it but it seems to me that there is hardly any meaning in the deletion that has been proposed or in the suggestion that has been made by the insertion which is proposed by clause 17. I formally move this amendment and I think the Hon'ble Member will explain why the present provision is going to be made in place of the one which is already existing.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE), (the Hon'ble Sir PROVASH CHUNDER MITTER): The House will notice that clause (*a*) of clause 17 is the same as clause (*a*) of 18B of the East Bengal Act. The sole object of this amendment is a drafting one. At the present moment the West Bengal and East Bengal Acts are slightly different in their wording and clause 17(*a*)

is here taken from 18B of the East Bengal Act. So it is a drafting amendment and I hope the House will accept it.

The motion of Mr. A. K. Fazl-ul Huq was then put and lost.

Mr. A. K. FAZL-UL HUQ: I beg to move that to clause 17 the following shall be added, namely, "and in section 18B(*a*) so substituted the words 'the transferability or any incident' shall be omitted."

I fail to see why when the landlord accepts the landlord's fee there should not be by implication, if not expressly, an admission of the landlord as regards the incident or transferability of the holding. As a matter of fact we are going by Statute to recognize the transferability under certain conditions. In these circumstances I think there is hardly any meaning in excluding the transferability or any incident to be binding on the landlord as has been proposed by the clause in the Bill. There may have been some reason in the Act itself, as it now stands, because in that Act the transferability is not the usual thing, but we are going to adopt a different course by the Amending Bill. In these circumstances I submit to the House that once the landlord has accepted the landlord's fee, it would not be open to him to raise any objection later on as regards the transferability or any cognate incident in the holding.

The Hon'ble Sir PROVASH CHUNDER MITTER: This motion is practically covered by what the House has decided on amendment No. 121. As Mr. Fazl-ul Huq has pointed out "the transferability or any incident" are words which find a place in section 18B of the existing Act, and if so, as the existing Act has worked well for 20 years it is not wise to tinker with it; it is just as well to leave things as they are. Our experience shows that the Act has worked well. Therefore I ask the House not to accept the amendment.

The motion of Mr. A. K. Fazl-ul Huq was then put and lost.

Babu MAHENDRA NATH MAITI: I beg to move that to clause 17 the following shall be added, namely, "and at the end of section 18B(*a*) so substituted the words 'share of himself or the share or title of others mentioned as landlords' shall be added."

It may sometimes happen through the ignorance of the transferrer tenant that the share of each of the landlords is not correctly stated in the deed of transfer, it may also happen that some person is mentioned as landlord who has really no interest. Such cases should also be guarded against. With this object in view I propose this amendment.

Section 18B(*a*) lays down that acceptance by a landlord of landlord's fee shall not operate as an admission of the permanence the amount or fixity of rent, etc., but it omits to specify the points I now suggest.

It is perhaps through oversight that the framers of the Bill did not provide this in this proposed section 18B(*a*).

I hope the Government would accept the amendment and the House would accede to it.

Srijut NAGENDRA NATH SEN: The amendment proposed by Babu Mahendra Nath Maiti is a very simple one. Because the other amendments, 121 and 122, have been negatived by this House, I do not see any reason why the simple amendment of Babu Mahendra Nath Maiti should not be accepted. In an instrument of transfer to which the landlord is not a party but different sets of co-sharers are described in a mistaken way, simply because a landlord or a set of landlords have accepted the landlords' fees, thereby they should not be presumed to have accepted the correctness or otherwise of the statements made in the instrument of transfer. This is a matter which will not harm anybody and it may not be used afterwards as an estoppel against the landlord. Therefore it is absolutely innocuous.

Khan Bahadur Maulvi AZIZUL HAQUE: I oppose this motion. I do not know the limit up to which we are to find soft corners in our hearts for the landlords of this Presidency. Already the section is bad enough. The landlord is given a certain amount of money, he accepts that and then he comes and says that even though I may have accepted a certain amount of money it has not been accepted as an admission of the transfer of tenure. That is a proposition which I have not been able to understand. There was another amendment of Mr. Fazl-ul Huq but this amendment is simpler than that. We are opposed to the common rights of the people of this country being taken away. The Evidence Act is quite sufficient and I think there should be no further substitution.

Mr. F. A. SACHSE: The section with which we are dealing is No. 18B. It simply says "the acceptance by a landlord of any landlords' fees shall not be taken as an admission as to the permanence, amount or fixity of rent, area, transferability or any incident of such tenure." It is superfluous to add the words proposed in the amendment, because the section does not refer to any document. It is section 18A which says that documents to which he is not a party will not be evidence against the landlord. This section refers to an act of the landlord, namely, the acceptance of a fee, and it is difficult to see how the mere acceptance of a fee could in any circumstances be taken as a damaging admission as to the shares or title of himself or any other superior landlord in the interest transferred. What the section aims at is this. A postal peon comes to the landlord and wants to pay him 2 or 3 money-orders. We do not want him to refuse them and to send them back to the Collectorate. If this section were not in the Act, he might do so for fear that the interest transferred was

not really a mokarari holding but an ordinary occupancy holding, in which case the result of his acceptance of the fee might be to prevent him from contesting the nature or the incidents of the tenancy, when he had looked up his papers and knew all the facts. Therefore I say that the important words in the section are "permanence, fixity of rent and transferability." I am inclined to think that "amount of rent" and "area" are superfluous. But the reference to shares and title are still more superfluous. Hence I oppose this amendment.

The motion of Babu Mahendra Nath Maiti was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Banerjee, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Bose, Babu Bejoy Krishna.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Rai Herendranath.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Gupta, Mr. Jogesh Chandra.
Khan, Babu Debendra Lal.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakenath.
Nandy, Maharaj Kumar Sris Chandra.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sanyal, Babu Sachindra Narayan.
Sarkar, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Blair, Mr. J. R.
Burge, Mr. S. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Drummond, Mr. J. G.
Ghose, Mr. M. C.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hopkyns, Mr. W. S.
Hussain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ehramul.
Huq, Mr. A. K. Fazlul.
Hussain, Khan Bahadur Maulvi Syed Maqbul.
Hussain, Maulvi Latafat.
Ismail, Khan Bahadur Maulvi Muhammad.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Marr, the Hon'ble Mr. A.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Momin, Khan Bahadur Muhammad Abdul.
Nazimuddin, Mr. Khwaja.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Rahim, Sir Abd-ur-.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Ray, Babu Nagendra Narayan.
Reid, Mr. R. N.
Roche, Mr. F. A.
Sarker, Rai Sahib Rebati Mohan.
Stapleton, Mr. H. E.

The Ayes being 39, and the Noes 46, the motion was lost.

The following amendment was called but not moved:—

"**Babu AKHIL CHANDRA DATTA** to move that clause 18 shall be omitted."

Maharaj Kumar SRIS CHANDRA NANDY: I beg to move that in clause 18 in the proposed section 18C, line 8, for the word "shall", the word "may" shall be substituted.

My intention is to give a discretionary power to the Collector. This is a simple demand and I hope the House will accept this.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I oppose this motion. The intention of the mover is to change section 18C under which the landlord's fee after a certain period is automatically forfeited to Government. The word there is "shall." He wants that instead of the forfeiture being automatic it should be only optional. The first objection in this case is this: This word "shall" is already in the present section. The only change that has been made in 18C is that the period has been extended from 3 to 5 years. That is a concession to the zamindars. The word "shall" has existed in the Act for the last 25 years and there is no change in the present Bill. The objection to make this forfeiture optional is obvious because instead of after a certain period the amount being forfeited automatically it will require the order of the Collector or the local Government every year in every case. This change, I think the House will agree with me, is not desirable. For these reasons I oppose the motion.

The motion of Maharaj Kumar Srish Chandra Nandy was then put and lost.

Mr. PRESIDENT: I find that amendments 129, 130 and 131 partly should be discussed with 132, 133, 134 and 135, but so far as 131 is concerned I shall put it partly because it refers to period and the other part as regards service of notice will be discussed together with 136, 137, 138, 140, 141, 142 and 143 partly. I hope the House understands what I mean.

3-15 p.m.

Babu AKHIL CHANDRA DATTA: Sir, I beg to move that in clause 18, in the proposed section 18C, line 9, for the word "five," the word "twelve" shall be substituted.

My reasons for moving this amendment are that there many cases in which even without any latches on the part of the landlord, it

is not possible for the landlord to withdraw the landlords' fees deposited with the Collector within a short time. There are cases of widows, minors and absentee people: there are cases where one brother lives in Calcutta, another at Rangpur, another at Chittagong, and so on. I can conceive of various other reasons which would make it impossible for the landlords to withdraw the money within 5 years, and there is no reason whatsoever why the money should be forfeited altogether to Government. The Government do not become any loser by being trustee of the money. In fact, it is more an advantage than a burden to Government. The Government should bear this burden with pleasure and with advantage and profit. It is in fact something like a fixed deposit of 5 years without liability for interest. A very large amount accumulates and Government have the whole amount with them without paying any interest. The question of limitation does not arise at all. The Collector is nothing but a trustee of the money, and, therefore, it will be unfair to the landlords to deprive them of the landlords' fees. Apart from the fact that the Collector in this particular matter is the trustee of the money. I submit that even in ordinary cases the usual period of limitation is 12 years. But when the money is deposited with Government, the question of limitation should not be raised, although there may be cases in which Government may in law put forward the plea of limitation; but no honourable Government ever do so. Therefore, I submit that the period should be extended from 5 years to 12 years.

In this connection, may I explain, Sir, with your permission why I did not move my motion for the omission of this clause altogether. My real intention was to do that. I feel very keenly on this matter of forfeiture of unclaimed landlords' fees, and I think that this provision for forfeiture is not a fair provision at all, and the whole thing should go out. That is the reason why I gave notice of my motion to omit the clause altogether. I am, however, thankful to Khan Bahadur M. A. Mumin for pointing out that if this clause were omitted, the old law would be restored, and the old law is undoubtedly worse than the proposed law. That is the reason why I did not move my motion, but I do hope that Government will see that there is no extravagance in the request made in my present amendment.

Rai HARENDRANATH CHAUDHURI: Sir, I beg to move that in clause 18, in section 18C, as proposed in the Bill, for the word "five," the word "ten" be substituted.

Sir, It should not be forgotten by the Council in this connection that not only very big landlords, but very small proprietors—even tenure-holders are entitled to landlords' fees and have got to take them from the Collector's office. There is also a bar which the landlords have got to get over, namely, that if there are co-sharer landlords, they have to make a joint application to recover these

landlords' fees. It sometimes may happen that the proprietors are living in different places, and it will be very difficult for them to meet together to recover these fees, unless the period for forfeiture be extended. Then, Sir, under the existing circumstances, about 25 to 30 per cent. of the total landlords' fees collected are forfeited to Government, because they cannot be claimed within a period of three years as provided in the Act. When such a large proportion of the total landlords' fees is forfeited, namely, 25 to 30 per cent. I submit there is ample ground for urging that the period should be extended and not limited to three years. With this short speech I command my amendment to the acceptance of the House.

Mr. PRESIDENT: Babu Saral Kumar Dutt, please would you move the whole amendment, but I shall put its two parts separately.

Babu SARAL KUMAR DUTT: Sir, I beg to move that in clause 18, in the proposed section 18C, for the words "five years from the date of such deposit," the words "ten years from the date of service of notice" be substituted.

The following motion was called but not moved:—

"**Babu NALINIRANJAN SARKER** to move that in clause 18, in proposed section 18C, for the word 'five,' the word 'eight' be substituted."

Maulvi ASIMUDDIN AHAMAD moved that in clause 18, in proposed section 18C, for the word "five," the word "three" be substituted.

He spoke in Bengali, the English translation of which is as follows:—

"I do not understand for what reasons Government propose to forfeit the tenants' money which is like their own flesh and blood. Government are only entitled to hold the money as deposit. As soon as the money is paid at the Registration Office, landlords will be notified. There is no reason why, in these circumstances, the money will remain with Government without any interest for five years. Three years is the standard time limit. Landlords are never seen to allow the payment of any amount due to them to be barred by limitation. Even if they are luke-warm in withdrawing the landlords' fee, or if some of them are unwilling to receive it at all probably considering that it would be unfair to take it, as it is not honestly theirs, there is no reason why it should unprofitably remain idle for 5 years. I move, therefore, that the term of deposit be limited to three instead of five years."

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I have a very pleasant duty in moving that in clause 18, in the proposed section 18 C, for the word "five," the word "two"" be substituted.

Sir, my reason is clear. The reason is that it is in the best interests of the landlords that they should know their interests as quickly as possible. There is no use asking them to sleep over everything which concerns them, and I think that Government is doing a disservice to the landlords by asking them to sleep over this matter for five years as comfortably as they can. My intention is that the landlords should be more vigilant and more watchful. I think the law and the legislature should not do anything which teaches them not to know their own interests. My motion is in the best interests of the landlords—if they are to take their proper place in the polity of the country and not simply to live on the income of others.

Sir, I welcome the idea that there should be forfeiture of these fees after a fixed time, but if that is to be done, it should be done as quickly as possible, for the simple reason that, when a man is told that he has got a certain amount of money lying with Government and he says the he will not withdraw it, but let the Government keep it for one, two, or three years more, I do not know of any economic principle by which the Government wants to lengthen the period of deposit. If two years is not enough to meet the argument of my friend Rai Harendranath Chaudhuri, that is, if the co-sharers are not able to meet together for two years, then they will never meet on this side of the grave. (Laughter.) I believe that they should not sleep over the matter for 12 years; and what you are proposing is not in the best interests of the landlord.

Sir, there is another reason which has prompted me to move this motion. I do not want to create an embarrassing position for Government, because keeping money for others for two years is bad enough, and I do not want that Government should undertake responsibility for the money for any period more than two years. I think it is an enormous responsibility to keep this very large sum of money and hand it over to the owners, for no consideration. Surely, you cannot start with the principle that this huge amount which is likely to be nearly 4 crores of rupees will for ever remain with Government. If it is kept for a perioid of 12 years, Government will have to employ a special agency for this purpose. I think that in the interests of public finance, in the interests of the landlords themselves, in the interests of the large body of people who pay this money, this period should be limited to 2 years instead of 5 years.

Sir, there is a further point to which I should like to refer. We are taxing the people of Bengal to the extent of three or four crores of rupees every year. There is a chance of the people of Bengal getting back this money from Government for expenditure on public welfare some day, and I do not want to defer this moment a day longer. I may add that it is by mistake I did not suggest a period of one year.

Babu AMARENDRA NATH GHOSE spoke in Bengali, the English translation of which is as follows: "I stand to support the amendment moved by Babu Akhil Chandra Datta. He has proposed to extend the time of forfeiture of landlord's fee. I am against the fundamental principle of forfeiting the landlord's fee deposited with the Government. The Government has no justification to swallow it up. I was tempted to move the amendment No. 124 which stands against the name of the mover of this present amendment under discussion. But it would instead of improving the situation cause more harm. If the clause 18 is deleted then the old clause will come to its place. If by omitting the present clause of this Bill we would be able to make the old section of the present Act disappear from the Act, I would be more glad to press the matter before the House.

I am not in a position to understand what justification the Government has to take this money. It is not known to me how Government has become successors of the ancestors of the present landlords. Even the Chief Secretary at the time of writing a letter to a common people styles himself "Your most obedient servant." Now if the Government servants are really public servants then under what law they can appropriate the public money deposited with them. Are they dishonest servants?

The Government in case of others made law to the effect that no deposited money will be barred by limitation, then why a contrary principle will be followed in case of the Government? Government is reponsible for the lives and property of the subjects, but they delightfully forget it when an opportunity arises to bring something to their pocket. It will not be far from truth if anybody says that the Government, by making this law of forfeiture, is saving themselves from being prosecuted under section 408, I. P. C. (criminal breach of trust by a servant).

Sir, they are justified to take others' money on only one ground that the law has no application to one who is strong. Again, Sir, at the time of giving money to the Sub-Registrar there is no difficulty. The sooner the money is kept on his table the amount is at once taken to the office box of the officer, but, Sir, when I will have to take the money from them I will have to go to the district, engage a mukhtear or pleader, wait there for a week or so, at the Hostel there I may get Rs. 3 or Rs. 4. It means after spending 10 to 15 rupees taking from home and after clearing the dues of hostel with the landlord's fee got from treasury will have to come back home borrowing some money from a friend or a relative.

It will not be out of place if I say that the notices of the deposit of landlords' fees are not regularly served in most of the cases. I have better experience of it. In conclusion I beg to say one or two

words about the amendment Nos. 133—135 brought by Maulvi Asimuddin, Maulvi Nurul Huq Chaudhuri and Khan Bahadur of Krishnagar, who want to reduce the time of forfeiture from five to three or two years.

These amendments have made their feelings towards the landlords palpable. Their amendments are simply malicious and mischievous. Where the English Government want to give five years time, the movers want to reduce it to two or three years.

The Government being an interested party is ready to make certain concession to the sleeping landlords but the movers of those two amendments cannot bear it. Disgraceful.

3-30 p.m.

Babu JITENDRALAL BANNERJEE: Sir, I do not care for any of the amendments that have been moved, nor can I understand why Government should have an indirect and illicit source of revenue in the shape of forfeiture. But Babu Amarendra Nath Ghose, in the course of his arguments, has used one expression which entirely passes my understanding. He has spoken of "maliker taka" (owners' money). I fail to understand how the deposited money becomes "maliker taka." If it is anybody's money, it is the money of the tenant of which a generous and bountiful Government, in the excess of its generosity for the zamindar, makes a free gift to the landlords. If, therefore, by sleeping over their rights, the zamindars incur the penalty of forfeiture, the best course to adopt is not that the money should be forfeited to the Government but that it should enure to the use of District Boards who should earmark it either for primary education or for any other measure equally beneficient.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I rise to a point of order, Sir. I think the member is not competent to discuss the disposal of the forfeited money. We are only discussing the period after which the money should be forfeited. I submit, Sir, everything else is irrelevant.

Mr. PRESIDENT: The Khan Bahadur is quite right. You are drifting from the amendment now under discussion, Mr. Bannerjee.

Babu JITENDRALAL BANNERJEE: The whole question is open for discussion, Sir, and I was only referring incidentally to the use that should be made of the forfeited money. And I here enter my protest against this interruption from the Treasury Bench. You are there, Sir, to call me to order if necessary but not any other member.

Mr. PRESIDENT: Every member has the right to rise on a point of order.

Babu JITENDRALAL BANNERJEE: But Mr. Mumin has no right to question the relevancy or irrelevancy of what I was saying, about which opinions may differ.

Mr. PRESIDENT: But as he referred the matter to the Chair I had to give my ruling on the point.

Babu JITENDRALAL BANNERJEE: It is not for me to question your decision, Sir. In any case, I have had my say.

Mr. PRESIDENT: But you were ruled out of order.

Babu KHAGENDRA NATH GANGULY: Sir, I rise to support the amendment that has been moved by my friend Babu Akhil Chandra Datta. I would point out, Sir, that most of the persons for whose benefit this amendment has been tabled are poor people although they are euphemistically called landlords but who as a matter of fact can only eke out a miserable existence from day to day and year to year. They are very poor, Sir, and they have got no recognised agents of their own, no gomostas or naibs to enable them to withdraw money in deposit from the court and naturally they find it very difficult and extremely inconvenient to get back the money once deposited with Government, and if this period be extended from 5 years to 12 years I do not see that Government or the people will lose anything. As a matter of fact some members of this Council who pose themselves as friends of the tenants have tabled certain amendments which are intended even to shorten this limit of forfeiture to two years or one year. I fail to understand the mentality of these gentlemen, Sir. May I enquire of them if the money thus forfeited will go to the pockets of the tenants? I think not. But they are so anxious to pose as friends of the raiyats that they have tabled these amendments in a spirit of hostility or prejudice to the landlord. I certainly take exception to this spirit. If the law allows the landlord a chance of getting the money which is justly due to them why should others stand in the way of their getting it? Why try to shorten the period from 5 years as allowed in the Bill to 3 years or 2 years? I would, therefore, submit to the House, Sir, that the period of forfeiture, namely, 5 years should be extended to 12 years.

[3-45 p.m.]

Srijut NAGENDRA NATH SEN: I beg to support the amendment moved by Babu Akhil Chandra Datta. It is unfortunate that he has been obliged to bring forward this question in this way. The mischief

arises out of the fact that it is a piecemeal legislation. If the Tenancy Act would have been amended as a whole, then it could have been considered whether the existing section 18C should be deleted or not. Failing that the only best course for us is to devise means by which the question as to whom the money really belongs to, whether to Government or to tenant, should be decided. It is well known that after section 18C was given effect to from the year 1907, there had been great heart-burning, much annoyance and trouble; because the law as it stands makes the deposit liable to be forfeited after the lapse of three years. Government have considered that position in the Select Committee, and the period of time has been altered from three to five years. There is no doubt about it that, whether the money belongs to landlord or tenant, Government is merely in the position of a trustee in this respect. In this connection I should like to refer to civil and revenue deposits of Government. Those who are conversant with the matter of civil deposits in district courts or with the moneys deposited for decree-holders or for landlords or by tenants—know that there is no authority which enables Government to forfeit the money in deposit unless it is taken away within 3, 5, 10 or 12 years. Khan Bahadur Maulvi Azizul Haque out of his sympathy for Government officers has been kind enough to suggest that in order to relieve Government officers of their duty of keeping the deposits it is necessary that the deposits should be forfeited after the lapse of two years. He is entirely forgetful of the fact that the money in deposit is not Government money; Government is merely a trustee for the money. My friend is a lawyer himself and he has got to deal with other people's money which comes to him occasionally from his clients. He can work up to this very beautiful principle which he himself has suggested, in the case of the money deposited with him by his own clients, supposing the clients do not take back the money within one year from the date of deposit, Khan Bahadur may think the whole amount as a forfeit to himself? The whole thing turns upon this: what charm is there in the figures 3, 5 or 2? If there is to be a forfeiture in favour of Government or any public body, some reasonable time should be given to the landlord or tenant to whomever ultimately the money should go, except for the fact of lapse of deposit. Ordinarily, 12 years is the usual period of limitation as provided by the Indian Limitation Act. I submit with respect to this matter that Government should consider why the period should not be fixed at 12 years instead of five years. I think the proposal contained in amendment moved by Babu Akhil Chandra Datta is reasonable and equitable, and should be accepted. The other amendments, namely, 133, 134 and 135 should, I think, be negatived.

Khan Bahadur MUHAMMAD ABDUL MUMIN: The provision in the Bill as I have already explained when opposing the previous

amendment is a very simple one; and it has existed since the year 1907 excepting as regards the period which was extended as a concession in the present Bill. I think a lot of unnecessary heat has been ushered into this matter by all the speakers on my right and a lot of irrelevant matter has been introduced. The question is very simple, namely, whether the landlord's fee which is not taken back should remain with Government for a longer period than five years or for five years as provided in the Bill or for a shorter period. Well, Sir, I may at the outset say that Government in the original Bill of Sir John Kerr did not propose that landlord's fee should come to the Registration office or to Government at all. As a matter of fact, Government is really anxious not to collect these large fees and be embarrassed with the amounts kept in deposit. Babu Akhil Chandra Datta said that it did not cost Government anything and on the contrary they took advantage of these large deposits. But, Sir, he does not know that these deposits do not fetch any interest; and it is very embarrassing to keep such a large undisbursed amount in the lapse deposit account. One member has asked as to whether there is any objection to it, if it does not cost Government anything and if it can be managed with the existing ordinary establishment. I would remind him that the expenditure of keeping all these amounts in deposit and to keep the register up-to-date and of keeping separate accounts for every body means a large establishment, the expenditure of which has to be met by the State. Supposing this amendment is carried, will the Council be prepared to vote for the extra cost of the establishment? (A VOICE: No, certainly not; why should there be any extra cost?) That answers my question. I repeat that Government does not derive any interest from all these amounts kept in deposit. Rai Harendranath Chaudhuri is in sympathy with minors and widows because there are numerous minors and widows among the landlords.....

Rai HARENDRANATH CHAUDHURI: On a point of personal explanation, Sir. I did not say anything about widows and minors.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Then, it is Babu Akhil Chandra Datta or somebody from my right who said that the minors and widows would not be able to withdraw the money in such a short period as five years. I would ask this House: have not these minors and widows got their guardians? What happens to the rents which the tenants pay them? Do they not realise their rents? Do they allow the rents to be barred by limitation? If they can look after the realisation of the rents from the tenants, they can also take back the small amounts of landlord's fee credited to their benefit. Probably the members do not realise the amount of work which these

andlords' fees entail on the Government establishment. Only in one ear as much as nearly two lakhs of rupees are deposited at present s landlords' fees; this amount will probably be ten times more after he provisions regarding transferability of raiyati holdings are passed. n one year I find about 25 per cent. of the money realised as landords' fees is forfeited. As regards the landlords themselves, as has lready been stated by one of the members, if they do not choose to ake up in the course of five years, I do not think they will wake up ver. There is another objection: If the Government have to postone these payments to a longer period than five years, there may be lot of changes among the landlords. It will bring more trouble o them because it will have to be proved who the real representatives nd the successors are. The sooner the money is returned, the better or Government, for landlords and all parties concerned.

Babu Amarendra Nath Ghose delivered a furious speech as I underood him I think I understood everything that he said.

His speech was not only irrelevant but self-contradictory. Babu khil Chandra Datta has said that no benevolent Government would gree to forfeit any amount or claim limitation after 12 years. I think e forgets what will happen in the case of a satanic Government.

I think the House will appreciate that we have already made a reat concession by increasing the period from 3 years to 5 years, and ny further increase in that period will embarrass the Government, ill increase the cost of establishment and entail a lot of trouble. I hould like to impress on the House again that Government is not at ll anxious to have anything to do with this money. If the House ecide that the money should not be paid to Government, I do not hink Government will agree to receive it in future.

I therefore oppose all the amendments now before the House.

Srijut NAGENDRA NATH SEN: On a point of order, Sir. With our permission, may I ask Mr. Mumin certain questions?

Mr. PRESIDENT: That is not a point of order.

Maulvi SYED NAUSHER ALI: My friend, Srijut Nagendra Nath Sen, has deplored it as a piecemeal legislation. We think that one deplores it more than we on this side of the House, because therwise we would have had an opportunity of discussing the rights f the tenants, but that is beside the point. Here on these amendments, it appears that sentiments have ruled and not reason. It has een stated that it is not the landlord's money, but tenant's money.

So long as the present Act is in force and so long as the Act that is going to be passed will be in force, I think it will be wrong to say that it is the tenant's money. Of course we, on this side of the House, want that the tenants should have better rights and interests in the land, but that is what it should be and not what it is. We are here for legislating and we have got to see to the rights of the people. If these fees are landlords' fees, surely they are landlords' money and if we on this side of the House express any opinion to show that we want to deprive the landlords of their legitimate dues, that will certainly be unjust on our part, and I, for one will disassociate myself from anything like that.

4 p.m.

Sir, it has been stated that we are not at all interested in these things—I do not agree there. The tenants of this country are vitally interested and interested in two ways. First of all, as it has been pointed out by Khan Bahadur Abdul Mumin, it involves a good deal of expenditure to Government and the poor people have to pay for that and therefore they are interested in that way. There is another way in which they are also interested and that is that this money which is forfeited to the Crown will ultimately come to the people, to the tenants as well. I may say at once that although I am not enamoured of British rule and I would be the first to throw off the foreign yoke.

Mr. PRESIDENT: You must confine yourself to the subject under discussion. I am afraid you are drifting away from it.

Maulvi SYED NAUSHER ALI: However, Sir, I was going to submit that we are interested in this matter. I have given already the first reason and I was going to give my second reason and that is that the money would come back to the people, or at least a portion of it. Of course, at the present moment we are confined to the present amendment and there are other amendments on which we shall have to speak. These are the reasons why we ought to take some interest in the matter. I think the whole House will agree with me when I say that every civilised Government has a right of forfeiture. As the question has been raised by what right Government would take that money. I say every civilised Government throughout the world has the right of escheat of forfeiture. Therefore, I submit that Government must have this right to have this money though it belong to the landlord. That being the position, the only point that remains to be considered is the period after which the money should lapse, that is, whether it would be three years, five years, or twelve years,

and no amount of discussion is perhaps necessary on this point. The law on this point formerly was three years, and it was raised to five years and I do not think that we on this side of the House should try to reduce it to two or one. That seems to be unfair to the zamindars whose money it is. Therefore, I oppose all the amendments and I say that we should unanimously support the proposal as it stands in the amending Bill.

Dr. KUMUD SANKAR RAY: Perhaps, Sir, you will permit me, a layman, to take part in the debate when there are so many legal intellects who have taken part in the debate and have spoken either in favour or against the amendments. I have listened with great interest to the speech delivered by my friend Khan Bahadur Maulvi Abdul Mumin and I quite sympathise with him in his embarrassment. The whole question resolves itself into two parts. First of all Government do not want to take this money; so I naturally sympathise for his embarrassment. What could he do? This money was thrown into his hands and he could not resist the temptation of keeping it for long and has to forfeit it. The next point that struck me after the debate that took place is the period during which he has to go through this embarrassment--whether it should be five or, as my friend Khan Bahadur Maulvi Azizul Haque would have it, one year--I certainly sympathise with the Khan Bahadur in having this period of torture reduced from five to one year. I must sympathise with him in his desire of reducing this period of agony on the part of the Government from five to one year. With these few remarks, I resume my seat.

Mr. BIJOY PRASAD SINGH ROY: I fully appreciate the enthusiasm of my friend Maulvi Syed Nausher Ali with which he has pleaded for the Government. I am perfectly sure that he has earned the gratitude of the Government benches and in the next year's honours list his name will appear.

I was not aware till I heard him speak that to be pro-tenant one must always be anti-landlord.

Maulvi Syed Nausher Ali must see that the money is forfeited; but in whose interest? It is certainly not in the interests of the tenants, because it goes to the Government and not to tenants. There is a certain procedure which has got to be followed, and the procedure is not a simple one, before money can be withdrawn by a landlord. The zamindars will lose this money for nothing and the tenants will not benefit thereby, but still my friend will insist on 5 years instead of 12 years. It is an instance where one will cut his own nose to spite his enemy.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I wonder whether the members of the House remember the history of landlords' fees in connection with Chapter 5. In the Bill of 1925 Government took the view that the landlord should collect the landlords' fees direct. It was at the request of the landlords and to help them that Government agreed to collect on their behalf this money through the registration offices. Then, it was agreed that the money should go to the collectorate from the registration offices. Well, if the money be kept in the collectorate it means that accounts will have to be kept, that records will have to be maintained; and if accounts have to be kept and records maintained, surely it will mean expenditure to the taxpayers, viz., landlords and tenants. Therefore it was a compromise and by that compromise 5 years was the period agreed upon. Now, if we are to extend it to 12 years, then records for 12 years will have to be maintained, and perhaps in many places new buildings will have to be erected to maintain these records, and a new staff employed for looking after the accounts. Well, we have made it quite clear that we are not anxious to handle this money. My friends on the right have heard Khan Bahadur Abdul Mumin stating that it is very embarrassing on the part of Government to keep this money. I think it is certainly embarrassing for an honest trustee to keep money, but for people of a different type it may not be so. It is not only a question of embarrassment, but it is a question of expense to all parties concerned. Now, Sir, five years is a sufficiently long period. If landlords are not diligent enough to withdraw the money within five years, what guarantee is there that they will withdraw the money within 12 years. In the meantime this additional period of seven years will mean expenditure to both parties. Well, if they insist on a large period, they should not blame us if we do not want to take the responsibility of handling this money. I would therefore request my friends to consider whether five years is not a sufficiently long period and whether by making it twelve it will not entail additional expenditure.

Rai HARENDRANATH CHAUDHURI: May I ask the Hon'ble Member if as an honest trustee is it not an embarrassment to appropriate the money?

The Hon'ble Sir PROVASH CHUNDER MITTER: I thank my friend for the question. If a trustee says in advance that he will do the work up to a certain time no longer and after that the money will be his own, in that case it is not dishonesty. My friend may not know this, but his lawyer friends, Mr. Chakravarti and Mr. Akhil Chandra Datta, know the well-known House of Lords case of Kinlock *versus* Secretary of State for India—7 Appeals Case, p. 619. The appeal

Courts' decision in the same case is in 15 Chanc. Division, page 1—in which it has been held that the Secretary of State and the Government are not and cannot be trustees and therefore cannot be made liable as such. Even if they do not distribute the money they are not liable or accountable. Therefore there is no question either of dishonesty or of liability.

Srijut NAGENDRA NATH SEN: Will the Hon'ble Member be pleased to state what will be the extra amount if the money is not forfeited?

The Hon'ble Sir PROVASH CHUNDER MITTER: It is not possible at the present moment to give an accurate idea of what the cost will be. The total sum collected last year was about Rs. 1,76,000. In future it is expected that the amount of deposit is likely to be more—each year may mean an additional expenditure of about Rs. 6. lakhs.

The motion that in clause 18, in the proposed section 18C, line 9, for the word "five," the word "twelve" shall be substituted, was then put and a division taken with the following result:—

AYES.

Bagchi, Babu Romes Chandra.
Banerjee, Babu Prometha Nath.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Bose, Babu Bejay Krishna.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Rai Harendranath.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Hematsingha, Babu Prabhu Dayal.
Khan, Babu Debendra Lal.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.
Roy, Dr. Sidhan Chandra.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Nalinirenjan.
Sen, Srijut Nagendra Nath.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Ali, Mr. Altaf.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Maulvi Nurul Huq.
Choudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.

Cohen, Mr. B. J.
Dash, Mr. A. J.
Drummond, Mr. J. G.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
Hussain, Maulvi Latafat.
Ismail, Khan Bahadur Maulvi Muhammad.
James, Mr. F. E.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Luke, Mr. N. R.
Maguire, Mr. L. T.
Marr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nazimuddin, Mr. Khwaja.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Rahim, Sir Abd-ur-.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Presanna Deb.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Babu Surendra Nath.
Ray Chaudhuri, Mr. K. C.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Sarker, Rai Sahib Rebati Mohan.
Solaiman, Maulvi Muhammad.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.

The Ayes being 34 and the Noes 65, the motion was lost.

4-15 p.m.

The motion of Rai Harendranath Chaudhuri was then put and lost.

The motion of Babu Saral Kumar Dutt as regards the period failed.

The motion of Maulvi Asimuddin Ahamad was then put and lost.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and lost.

Mr. PRESIDENT: I now propose to have one discussion on motions Nos. 136, 137, 138, 140, 141, 142 143 (partly), 144, 145, 157 (second proviso), 158, and 159.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: Sir, I beg to move that in clause 18, in the proposed section 18C, in the penultimate line, for the words "such deposit," the words "service of notice" shall be substituted.

The object of my amendment is obvious. (The member spoke only a few words which were inaudible at the reporters' tables.)

Mr. F. A. SACHSE: Sir, the present practice is that the date on which the landlord's fee is paid to the Collectorate is entered in the Landlords' Fee Register: it is also entered in the Revenue Deposit

Register. That is a fixed date, and it is recorded in two of the most important registers in the Collectorate. If we accept this amendment, for that fixed date we shall substitute an uncertain date unknown to anybody. It might require a separate register to note it. Then difficulties may arise as to whether the notice was actually served and when it was served, and litigation may follow as to whether a particular fee had been forfeited to Government or not. In view of the fact that the House has already decided that five years is quite sufficient time for landlords to come to the Collector for withdrawing landlords' fees, I do not think there is much to be said for altering that period of five years by extensions varying from say 19 days to 6 weeks.

The other point that has been raised in this debate is that before a fee is forfeited a second notice should be served on the landlord at the end of five years. This is entirely unnecessary and will cause a very large expenditure to the Collector, as it will require an increase in the staff of peons and nazirs.

The chief grievance of the landlords is that they do not receive the notices which are filed in the Sub-Registrar's office by the transferee with the fee. If those notices do not reach their destination when they are sent out by the Collector a month or so later, is it likely that they will reach their destination when re-issued in duplicate 5 years later? By that time many of the co-sharers may have changed their addresses or died. I do not think it will do any good either to the landlord or to any other person to have a second notice in each case. We have already said that we shall try to make the procedure for paying these fees more efficient: if possible a running ledger account will be opened for each co-sharer landlord and we shall send him notice every six months or a year as to how much is due to him.

Sir, the various speakers on this side of the House have pointed out that neither the Sub-Registrars nor the Collectors, nor the Finance Department, nor anybody connected with Government, wish to have anything to do with the collection of these fees. If the House does not believe us, then the best thing that they can do is to accept amendments Nos. 270 and 271, which have been tabled by Maulvi Kader Baksh and Babu Jogindra Chandra Chakravarti respectively. Let the zamindars collect the fees themselves amicably or by rent suit as arrears of rent. That was the original proposal and Sir John Kerr's Committee accepted it. Government at present do this work simply because they think that they are doing a good service to the zamindars as well as to the tenants.

There is, Sir, another misconception and that is about the utilization of the money. This House controls the budget and if

the money goes to Government, it will be spent by them for the general improvement of the country just as it would be by the District Boards.

Dr. BIDHAN CHANDRA ROY: And not for the police?

Mr. E. T. McCLUSKIE: Sir, I beg to move that in clause 18, in the proposed section 18 C, after the words "such deposit," the words "the notice of such deposit having been properly served on the landlord" shall be inserted.

Sir, in this proposed new section I see that no arrangement to give notice to the landlord has been proposed. Then, how is the landlord to know that the money has been deposited with the Collector? In the absence of such provision, the landlord gets no notice, and automatically the money deposited in his favour is forfeited to Government. Surely, Sir, Government should make some arrangements whereby the landlord's money may be saved from forfeiture. That is my point. I am neither a landlord nor a tenant. Still I think that something should be done by Government before the money is forfeited to them. I hope, Sir, the House will support this motion, so that some notice may be given to the landlord. It should also be seen that the notice is properly served, i.e., in a manner which will enable the landlord to become aware of it.

The following motions were called but not moved:—

Mr. SYED MD. ATIQULLAH to move that in clause 18, proposed section 18 C, in lines 10-11, for the words "forfeited to the Government," the words "regarded as lapsed deposits" shall be substituted.

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 18, in the proposed section 18 C, after the word "Government," the words "after giving six months' notice to the landlord" shall be substituted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, to move that in clause 18, in the proposed section 18 C, in the last line, after the word "Government," the words "after three months' notice to the landlord" shall be added.

Babu SACHINDRA NARAYAN SANYAL: Sir, I beg to move that in clause 18, in proposed section 18 C, after the words "forfeited to the Government". the words "clear three months before such

forfeiture notice of forfeiture should be sent to the landlord by registered post " shall be added.

Sir, the reasons which actuate me to move the amendment are as follows: I do not find any reason why the money should be confiscated without due and previous warning. After the passing of the present Act, large sums will accumulate as landlord's transfer fee in the hands of the Government. Therefore, it is quite reasonable to demand that every facility should be afforded to the landlord before the extreme step is taken.

Sir, in many cases the notices referred to in this section may not reach the landlord, and, in case of his death, his heirs. It is, therefore, proper to demand that before actual forfeiture they may receive another notice through the court so that they may take proper steps for realising the amount.

The following motion was called but not moved and therefore deemed to be withdrawn.

Babu NALINIRANJAN SARKER to move that in clause 18, in proposed section 18 C, at the end of the section the following words shall be added, namely—" after three months' notice to the landlord and shall be utilised exclusively for the improvement of the agriculture of that district."

[At 4-35 p.m. the Council adjourned and it reassembles at 4-45 p.m.]

Srijut JOGENDRA NATH MOITRA: I beg to move that for the Bill clause 18, after proposed section 18 C, the following shall be added, namely " after a final and duly registered notice has been served on the landlord or landlords concerned, giving a month's time for taking out or claiming the amount."

It is a very modest proposal. In my amendment only one month's time has been fixed for notice. In view of this I hope the member in charge will accept my amendment.

The following amendment was called but not moved:—

Mr. PROSANNA DEB RAIKAT to move that in clause 18, proposed section 18 C, the words " after a reasonable notice to the landlord " be added at the end.

Mr. PRESIDENT: I now come to amendment No. 157, 2nd part.

Maharaj KUMAR SRIS CHANDRA NANDY: Sir, I beg to move that in clause 18, to the proposed section 18 C, the following proviso shall be added, namely—

"Provided that where the landlords are registered proprietors, the money in deposit shall be credited to the revenue account of those proprietors to whom the money is due:

Provided also that if the Government elects to forfeit the money, due notice of such forfeiture shall be given by the Collector to the persons interested, by registered post, at least six months before the date of forfeiture."

In moving this amendment I beg to request the Government to do an act of bare justice to the zamindars whose money they hold. And I hope the House will admit the reasonableness of the demand I make.

When the money is due to a sole landlord and the landlord's fee is remitted to him by money-order no difficulty would arise. But where there are several joint landlords it is difficult for the Collector to apportion the fee in a summary way and it remains in deposit until the landlords make a joint application for it. In these cases, it would be proper for the Collector to take the money in the revenue account if there is only one account in the Collectorate.

Some of the landlords will be benefited by this arrangement. As the money belongs to the landlords, there is no reason why it should be forfeited when that can be utilised for their benefit. It is only a case of giving a man or group of men what is undoubtedly his or their due. There is no reason why the money should be forfeited when it can be utilised.

It may be argued that it would be difficult for the Government to open accounts; but the difficulty is more imaginary than real as the Government have such revenue accounts to which the sums held in deposit can easily be credited and the landlords called up to pay the balance.

Sir, the notice given prior to forfeiture is very necessary. If such notice is given the landlords will make a joint effort to withdraw the money. It is of the utmost importance that the notice should be served by registered post. That will not only ensure safe delivery to the party but also save unnecessary trouble to the court peon and preclude the possibility of his submitting false return.

The following amendments were called but not moved and therefore deemed to be withdrawn:—

Mr. ALTAF ALI to move that in clause 18, to proposed section 18C, the following proviso be added, namely:—

"Provided notice of such forfeiture is given to the landlord three months before the expiry of the five years."

Babu AMARENDRA NATH GHOSE to move that in clause 18, after proposed section 18C, the following shall be added, namely:—

"Provided that a notice should have been given to the landlord concerned, not less than one month before the date of such forfeiture, if the money is not withdrawn before a date to be specified in the notice."

Mr. PRESIDENT: Now we will have a general discussion.

Khan Bahadur Maulvi AZIZUL HAQUE: I oppose the amendments which propose to give registered notice once again to the landlords. In my school days I read a story that a camel wanted to get inside a tent, and when it was allowed a little passage it wanted the whole tent for itself. The landlords have been given in place of 3 years 5 years of life when they may withdraw their deposit. Even that has not been enough. They now want that before the expiry of 5 years they should be given a registered notice. I put two simple questions. Who will pay the registration charges? Surely the tenants should not pay in order to serve fresh registered notices. This means a correspondingly heavy work in the offices. Then suppose there is a deposit of Rs. 2 and there are 20 landlords, it will mean issuing 20 fresh registered notices involving an expenditure of Rs. 5-8 in addition to the enormous amount of trouble. Who are responsible for this forfeiture but the zamindars? It is no crime for anybody to say that within these five years a number of landlords may die. So once you impose a legal liability upon Government to serve notices on landlords it becomes the duty of Government to do it, but surely we cannot ask the Government to keep a record of all possible successors in interest or representatives of landlords who have taken leave from this world for good. I think this proposal is impracticable. The law does not provide for anything which will help latches. I am quite in sympathy with the demand that notices should be properly served. I understand that position, that landlords should have proper notices. But, after the notices have been served I do not understand why the landlord should be wakened up once again by notices which will involve a large amount of unnecessary trouble and botheration to the department concerned. In these circumstances I oppose the amendment which wants that fresh notices should be served even if notices had been served before. It does not need any scrutiny to see that it will mean unnecessary expenditure and it will mean trouble to the department which might come forward and say "you are imposing a legal liability on us, please increase the staff, otherwise we cannot do it."

Mr. F. A. SACHSE: I have already dealt with it before. When I got up I thought that the proposal before us was that the period after which fee should lapse to Government should be extended from the date when the fee is actually deposited in the Collectorate to a date on which the notice has been served on the landlord. Notices which come from the sub-registry offices with actual fees, as soon as they are received from the Collectorate, are sent out to the landlords, both the general landlords and co-sharer landlords. We are dealing actually with an entirely another kind of notices—duplicate of the original notices which have to be served 5 years later. I am quite sure from the cases that I have recently seen in the subdivisions that various fees which are sent out to the sole landlords come back because the addresses are not correctly written and the post offices refused to deliver them. So if you have to send out duplicate of these notices 5 years later there is no chance that they will reach the landlords. It is the complaint of the landlords that many of the notices never reach them because their addresses are not properly written or that their names have changed, or because many of them have changed their homes or gone away or even died. This duplicate notice will certainly serve no useful purpose but it will involve very heavy expenditure which the tenants will have to pay at the time they file the original notices. Transmission of duplicate notices will double the cost; instead of one cost the tenants will have to pay two.

The motion that in clause 18 in the proposed section 18C, for the words "from the date of such deposit," the words "from the date of the service of notice" be substituted was then put and a division taken with the following results:—

AYES.

Asharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Atiquilah, Mr. Syed Md.
Bagchi, Babu Remos Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Bannerjee, Babu Jitendralal.
Basu, Babu Basi Bekhar.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Bose, Babu Bejey Krishna.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Rai Narendranath.
Choudhury, Maulvi Khorshed Alam.
Das Gupta, Dr. J. M.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Sarat Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Goenka, Rai Bahadur Badridas.
Guha, Mr. P. N.
Himatsingka, Babu Prabhu Dayal.
Hussain, Maulvi Latafat.
Khan, Babu Debendra Lal.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
McCluskie, Mr. E. T.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.

Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijay Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Chaudhuri, Rai Bahadur Satyendra Nath.
Sanyal, Babu Sachindra Narayan.
Sarkar, Babu Nalinranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Abbott, Mr. E. G.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Dawding, Mr. T. W.
Drummond, Mr. J. G.
Fyfe, Mr. J. N.
Ghose, Mr. M. C.
Gordon, Mr. A. D.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Khan Bahadur Maulvi Syed Maqbul.
Ismail, Khan Bahadur Maulvi Muhammad.
James, Mr. F. E.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Luke, Mr. N. R.
Maguire, Mr. L. T.
Marr, the Hon'ble Mr. A.
Martin, Mr. G. S.
Miller, Mr. C. G.
Mitter, the Hon'ble Sir Provash Chunder.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nazimuddin, Mr. Khwaja.
Nelson, Mr. W. H
Parrett, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Sarkar, Rai Sahib Rebati Mohan.
Solaiman, Maulvi Muhammad.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 56 and the Noes 53 the motion was carried.

The following motions were not put as they were covered by the foregoing decision of the Council:—

"**Rai SATYENDRA NATH ROY CHOUDHURI Bahadur** to move that in clause 18, in the proposed section 18 C, in the penultimate line, for the words 'such deposit,' the words 'service of notice' shall be substituted."

"**Mr. E. T. McCLUSKIE** to move that in clause 18, in the proposed section 18 C, after the words "such deposit," the words "the notice of such deposit having been properly served on the landlord" shall be inserted."

Mr. PRESIDENT: I will now take up motions Nos. 146, 147, 148, 149, 150, 151, 152, and 154 together.

I now call upon Maulvi Shamsur-Rahman to move his motion.

Maulvi SHAMSUR-RAHMAN: Sir, in moving this motion I beg to say.....

Babu SURENDRA NATH BISWAS: I rise on a point of order, Sir. We understood that we had voted on motion Nos. 136-137, but now, Sir, you have taken up motion No. 146. May we know, Sir, what will be the fate of motions Nos. 138 to 145? Should not any voting take place on them? For instance—What about No. 144?

Mr. PRESIDENT: These motions failed and consequently all the amendments that were discussed along with them right up to 144 also failed.

Babu SURENDRA NATH BISWAS: The discussion was on all the amendments as a whole, but voting should take place separately as they deal with separate subjects. For instance, motions Nos. 136 and 137 refer to "such deposits" and "service of notice." Motion No. 144 refers to notice after forfeiture.

Rai HARENDRANATH CHAUDHURI: Is it your ruling Sir, that the question arose in connection with the amendments Nos. 136-137, 138, 142 and 144 and that the voting on motion No. 131 will govern their fate? Is that your ruling, Sir?

Mr. PRESIDENT: Is your objection with regard to motion No. 144 only?

Rai HARENDRANATH CHAUDHURI: These amendments Nos. 131, 137, 138, 142 and 157.....

Mr. PRESIDENT: Let me give you some directions so that matters may not be complicated. Motion No. 131 (2nd part) was carried. No. 136 was lost. If you take objection only with regard to No. 144 then of course you can discuss that. On the other hand, if you want to raise questions with regard to other amendments 136 or 138 and so forth, then I would like to take them one by one. I should take each amendment into consideration whether the decision on item 131 (2nd part) has affected it or not. Do I understand that your grievance is only with regard to motion No. 144 and that you are satisfied with regard to others?

Rai HARENDRANATH CHAUDHURI: Our objection is that the amendments beginning from 136 and ending with 151 should be put to vote separately because they propose different things and are not alike.

So far as motions Nos. 136 and 137 are concerned they are covered by No. 131 indeed, but No. 138 is somewhat different because it raises the question of "proper service."

Mr. PRESIDENT: Suppose Nos. 136 and 138 were carried, what do you think would be the effect of that so far as the amending Bill is concerned?

Rai HARENDRANATH CHAUDHURI: Nos. 131, 136, 137 are all similar but 138 is somewhat different, though the difference is very small indeed.

Mr. PRESIDENT: You do not raise any question with regard to 138?

Rai HARENDRANATH CHAUDHURI: No.

Mr. PRESIDENT: What about No. 142?

Rai HARENDRANATH CHAUDHURI: It is different and the difference is substantial.

Mr. PRESIDENT: Your objection is with regard to Nos. 142 and 144, and you say they all deal with separate questions.

Khan Bahadur Maulvi AZIZUL HAQUE: Yes, Sir, one contemplates notice after deposit and the other contemplates notice before deposit.

Mr. A. K. FAZL-UL HUQ: Sir, as some of the amendments are different we should have to see whether they would be inconsistent if they were all carried and I think that should be the criterion as to what motion should be put after No. 137 is carried, otherwise it becomes very inconvenient.

Mr. PRESIDENT: That is the point which has been raised and I have asked Rai Harendranath Chaudhuri to explain. It appears that he has yielded so far as Nos. 136 and 131 are concerned. With regard to 142 and 144 there seems to be some difficulty. Mr. Biswas, which of these two you like to be put? They are similar and voting on one of them will decide the fate of the others.

Babu SURENDRA NATH BISWAS: We would like that No. 142 should be put.

Mr. PRESIDENT: Very well.

5-15 p.m.

The motion of Babu Sachindra Narayan Sanyal was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Bose, Babu Bejoy Krishna.
Bose, Mr. S. C.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Rai Harendranath.
Choudhury, Maulvi Khorshed Alam.
Da- Gupta, Mr. J. M.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Goenka, Rai Bahadur Badridas.
Gupta, Mr. Jogesh Chandra.
Himatsingka, Babu Prabhu Dayal.
Khan, Babu Debendra Lal.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Lala, Babu Saroda Kripa.
Maiti, Babu Mahendra Nath.
McCluskie, Mr. E. T.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Ray, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Abbott, Mr. E. G.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Mausher.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Dowding, Mr. T. W.
Drummond, Mr. J. G.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. N.
Ghose, Mr. M. C.
Gordon, Mr. A. D.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
Hussain, Maulvi Latafat.
Ismail, Khan Bahadur Maulvi Muhammad.
James, Mr. F. E.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Luke, Mr. N. R.
Maguire, Mr. L. T.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nazimuddin, Mr. Khwaja.
Nelson, Mr. W. H.
Parrott, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Rahim, Sir Abd-ur-.
Rahman, Maulvi Azizur.

[illegible], Maulvi Shamsur-[illegible].
[illegible], Maulvi Syed Abdur.
Roy, Babu Nagendra Narayan.
[illegible], Mr. R. N.
[illegible], Mr. F. A.
Sarkar, Rai Sahib [illegible] Mohan.
Sulaiman, Maulvi Muhammad.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 57 and the Noes 57, there was a tie.

Mr. PRESIDENT: I give my casting vote in favour of the Government, although it is against my personal opinion, I do so only to maintain the status quo, which as at present advised the chair should keep up, following convention.

The following motion was therefore lost:—

"That in clause 18, in proposed section 18C, after the words 'forfeited to the Government,' the words 'clear three months before such forfeiture notice of forfeiture should be sent to the landlord by registered post' shall be added."

The following motion was not put as it was covered by the foregoing decision of the Council:—

"That for the Bill clause 18, after proposed section 18C, the following shall be added, namely—'after a final and duly registered notice has been served on the landlord or landlords concerned, giving a month's time for taking out or claiming the amount'."

"That for the Bill clause 18, after proposed section 18C, the proposed section 18C, the words "and by Government made over to the District Board" be added at the end.

Sir, in moving this amendment my reasons are simple. This sum of money is paid by the people of the countryside for the benefit of their landlords. So this sum of money can best be employed for the direct benefit of either the landlords or the tenants. If the landlords take them away, well and good, but if not, the question is how it can be best employed for the benefit of both the landlords and the people who pay it. I have proposed that this sum be made over to the District Board. District Boards as you all know are the custodians of the nation-building departments of the district. But they are as a whole starved for want of funds. They are the people who have to manage the health, sanitation, agriculture and education. The landlords in the good old days exactly occupied the same position as the present day District Boards. Since the advent of foreign civilisation they have come to live in towns and being better employed in the pursuit of enjoyment have almost forgotten their duties towards their tenants who contribute so much to their happiness.

Government have absolutely no justification to forfeit this sum and put into the general coffer. It is in the nature of things that

when a thing is given to another it should bless either he that gives or he that takes. But by a forfeiture by the Government it will bless none of the parties on the off chance of its being employed for the numerous engines of oppression under which the people of this country are smarting.

The landlords for whose benefit this sum of money is paid by their tenants and the tenants themselves who pay are the proper persons to indicate how this sum of money should be employed. The tenants cannot ask for anything better than that this sum of money be employed for the betterment of the health, sanitation, agriculture and education of their children. To me it seems that the landlords to whom this sum of money really belongs will wholeheartedly support my amendment for the simple reason that since they are not getting it let it be employed for the improvement of their tenantry who pay it. They will not certainly be the dog in the manger. Although they cannot have it they will not willingly let others enjoy the same.

It may be urged by Government that this had been the law of the land for sometime past. But as against that my argument is that we are amending the law for the benefit of the people of the country. If that be so I think the House will agree with me that if my motion is carried it will certainly be for the benefit of those whom we represent.

Some Government members also tell me that it will be non-votable in the Council. But if that be so it is immaterial because if we cannot deal with it in the floor of this House, we shall be able to employ it more advantageously for the betterment of the children of the soil through the District Boards where non-official voice counts.

Srijut NAGENDRA NATH SEN: On a point of order, Sir. This amendment stands in my name also. So may I have an opportunity to speak on it?

Mr. PRESIDENT: There will be a general discussion after all the amendments, which I have placed in one group, have been moved; your opportunity will then come.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I beg to move that in clause 18, to the proposed section 18C, the following shall be added, namely, "and shall then be transferred to the District Fund."

The members of the House will be pleased to see that this amendment is on the same lines as the previous amendment which has been moved by my friend Maulvi Shamsur-Rahman. The grounds which my friend Maulvi Shamsur-Rahman has advanced in support of his amendment are precisely those which I would advance in support of mine.

[5-30 p.m.]

I would only say that it stands to reason that when certain sums are deposited with the Government, the sums deposited in a particular district belong to that district, because the sums have been deposited by the tenants for payment to the landlords of that district. Therefore, it seems reasonable that the amount of total deposits accumulated in that district should be spent in that district by some agency which can spend it. The only agency that we can conceive of in the district is the District Board. Therfore the only possible way in which this money can be spent for the benefit of the district will be to hand over the money to the District Board: and it is for that purpose that we suggest that the money forfeited to Government shall, after forfeiture, be transferred to the District Fund. It has been suggested to me, Sir, that if this money be transferred to the District Fund, the effect of that will be that it will be "non-votable," *i.e.*, this Council will have no power to vote over this sum. But it seems to me that whether this Council have any power of vote or not, it would be certain that this money would be spent for the people of the district to which it rightly ought to belong. From that point of view, I move this amendment and hope that the House will accept it on the principle that it is the people's money and the people ought to be benefited by it.

Babu AKHIL CHANDRA DATTA: I beg to move that in clause 18, in the proposed section 18C, last line, for the word "Government" the words "District Board" shall be substituted.

Sir, the only reason for which I have thought fit to move this amendment is that if the money be handed over to District Boards, it will be utilised for the benefit of the people on sanitation, primary education, communication, water-supply and such matters: Whereas if it goes to Government, we do not know where it will go.

Maulvi NURUL HUQ CHAUDHURI: I beg to move that in clause 18, in the proposed section 18C, the following shall be added, namely, "and shall be credited by the Government to the District Fund of the district in whose revenue register the parent estate is borne."

Sir, I think it will not be disputed that whoever be the owner of this money—whether it be the landlord or the tenant—one thing is at least certain that Government is not the owner of this money. This money has been paid by one class of tenant to another. If, within 5 years from the receipt of notice, one class of tenant, *i.e.*, the zamindars, refuse to withdraw the money, it can be presumed that they do not want this money, and in justice therefore the money ought to go back to those who had paid it but it is difficult to return the money

to them. The question is in what manner the money is to be utilised. It is the sense of the majority of this House that this money should not at any rate go to Government. The question is not, as I am told, of Rs. 50,000 a year—the amount approximately receivable under section 18C—but of a much greater sum. Under the existing law, Government are not bound to forfeit the fees collected under the Act. The language of section 18C is this—the Governmnet may forfeit this amount, etc.—and, as a matter of fact, a very large amount of money between 7 to 10 lakhs is in deposit up to this moment at the Government treasuries. The question is, therefore, whether the money should go to the District Board as representative of all classes of tenants or to the Government. We think that the money will be much more usefully employed if it be handed over to the authorities of District Boards than if it be kept with the Government. With these observations I commend my amendment for the acceptance of the House.

The following motion was called but not moved and therefore deemed to be withdrawn:—

Mr. A. K. FAZL-UL HUQ: That in clause 18, at the end of proposed section 18C, the following be added, viz., "to be handed over to a committee or committees charged with the duty of directing primary education in the Presidency."

Mr. A. K. FAZL-UL HUQ: I beg to move that the following be added at the end of proposed section 18C, viz., "to be credited to the District Boards within whose respective jurisdictions such fees accumulate."

Sir, after the discussion that has taken place, there remains very little for me to say in support of this amendment. Whatever may be the diversity of opinion regarding the period after which this unclaimed landlords' fees should be forfeited to Government, there seems to be an unanimity on the part of the members on this side of the House that this money should be utilized on some purpose of public utility and benefit. But the only reason why I have specifically mentioned "District Boards within whose respective jurisdictions such fees accumulate" is that I have tried to show that the landlords' fees forfeited in a district belong to it, because it has accumulated within the jurisdiction of the district; so that each district shall have the benefit in proportion to the amount accumulated in the district. It is a reasonable suggestion to which I do not think that anybody will take any objection. With these few words. I commend my amendment to the acceptance of the House.

Mr. P. N. GUHA: Sir, may I, with your permission, amend at short notice this motion by substituting one word, viz., "credited" for the words "handed over." My object is to make it legal.

Mr. A. K. FAZL-UL HUQ: If that is allowed, I do not object to it. As regards No. 153, I do not think I could move it if I moved No. 156. So I did not move it.

There being no objection to the alteration, the amendment was modified as follows:—

"That the following be added at the end of the proposed section 18 C, viz., 'to be credited to the District Boards within whose respective jurisdictions such fees accumulate.'"

Rai HARENDRANATH CHAUDHURI: Sir, may I point out that No. 155 raises a different issue?

Mr. PRESIDENT: Quite so, but it can be discussed now. In putting these motions, I will put them in different groups in accordance with their relevancy.

Maulvi ASIMUDDIN AHAMAD moved that in clause 18, in proposed section 18C, in line 11, for the word "Government," the words "local Union Boards or Union Committees to which lands concern" shall be substituted.

He spoke in Bengali; the English translation of which is as follows:—

"It has been proposed to give the landlord's fee to the District Board after 5 years, to spend it for primary education or for agricultural improvement. My opinion on this subject is impartial as I am neither the Chairman nor the member of any District or Union Board. Some sort of Union Boards have been established in villages. But these are quite bogus institutions as neither money nor power has been given to them. Cholera, kala-azar and malaria are rampant in the villages and they lack good schools, roads and means of irrigation. For want of money these wants cannot be removed and the District Boards are unable to adopt any measure to that effect for similar cause. Occasionally new roads are constructed, new dispensaries opened and new canals excavated by the District Board in a village but they are so done as to prove useful to some particular member of the Board and not the people of the village. I think both Government and District Board should forego their claim to the landlord's fee in favour of Union Boards or Union Committees. This fee will remain with Government for long 5 years and the landlords concerned will be notified twice to withdraw it. In these circumstances there appears to be very little chance of its passing into the hands of a second party. My proposal is that when such fee is forfeited by Government, it should be spent on primary education and agriculture as has been suggested but it should be made over to the Union Boards for that purpose."

Mr. KHWAJA NAZIMUDDIN: I beg to move that in clause 18 the following be added at the end of proposed section 18C, "and the forfeited amount shall be earmarked for the improvement of the agriculture of the district."

Sir, it appears that the majority of the members on this side are in favour of the landlord's fee being credited to the District Boards. I would, however, ask this House seriously to consider whether it would not be more profitable that this money should be earmarked for the improvement of the agriculture of the district. So far, amongst the transferred subjects, the Department of Agriculture has been starved for funds, while Education and Sanitation have been receiving most of the money that has been available for distribution. It cannot be denied that the improvement of agriculture is just as important as education or sanitation. At the present moment, the Agricultural Farm at Dacca is doing splendid work with the limited resources available, but a great deal more could be done if some more money could be spared for this purpose. It is contended by Government that this money should be credited to the general revenues and that it is bad finance to earmark any sum for any particular purpose at this stage. In view of the fact that it is so very difficult for the Department of Agriculture to get any money, I feel that this money should be earmarked for agricultural improvement of the district by which this money has been contributed. With these words, I would ask the House to seriously consider my amendment.

Mr. PRESIDENT: The first part of motion No. 157 has already been moved, and therefore I would pass over to motion No. 160.

The following motion was called but not moved:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, to move that in clause 18, to the proposed section 18C the following proviso shall be added, namely:—

> "Provided that where the landlords are registered proprietors, the money in deposit shall be credited to their respective revenue accounts according to their share."

MEMBER in charge of DEPARTMENT of FINANCE (the Hon'ble Mr. A. Marr): Sir, I do not propose to.... .....

Babu SURENDRA NATH BISWAS: On a point of order, Sir. I rose to say something. May I ask your permission to move an amendment?

Mr. PRESIDENT: That is not a point of order. Anyhow, you are too late.

Babu SURENDRA NATH BISWAS: Of course, Sir, it is in your discretion to give me the permission.

Mr. PRESIDENT: I do not give it.

Babu SURENDRA NATH BISWAS: Sir, if you hear me.....

Mr. PRESIDENT: I can anticipate what you will say. It is not possible for me to give the permission you ask for.

The Hon'ble Mr. A. MARR: Sir, I do not propose to go into the merits of these amendments at all. All I want to do is to explain to the House the position of the Finance Department in regard to them. In the first place, it is against all practice for a legislature to earmark any revenue any particular revenue for particular purposes, and the legislatures in all countries have been very jealous that this right of theirs to deal with revenues should be safeguarded.

In the second place, I would suggest to the House that a revenue Act, like the Bengal Tenancy Act, is not a suitable place for the allocation of general revenues. If this amendment is passed by the House and accepted by Government, it will be my duty in the next budget to show all this money as non-voted, that is to say the power of the House to deal with this money at all will be taken away. I would suggest for the consideration of this House whether it would be proper to deprive this House or its successor of the right to deal with this revenue as it pleases.

Mr. JOGESH CHANDRA GUPTA: Sir, with reference to the remarks that have just fallen from the Hon'ble the Finance Member, may I point out to this House that as a matter of fact road-cess is earmarked and kept separately for the District Fund. As the road-cess income goes to the District Board, there could be no objection to earmark this money also for the District Fund.

In the second place, I would also point out to this House that this money does not legitimately belong to the Government. The Government merely receives this money and holds it on behalf of the landlords and tenure-holders. Therefore, there should be absolutely no objection to earmark this money for any particular fund.

In the third place as regards suitability of such provision in this Act I submit that such a provision can really be made in the Bengal Tenancy Act, because this money will be in the hands of the Government in accordance with the provisions of the Bengal Tenancy Act.

Sir, I, therefore, do not see that there is anything in the arguments advanced by the Hon'ble Mr. Marr.

The Hon'ble Mr. A. MARR: May I point out, Sir, that road-cess money is not Government money and that it does not appear in the budget.

Mr. JOGESH CHANDRA GUPTA: Neither is the landlord's fee Government money nor need it appear in the budget.

Srijut NAGENDRA NATH SEN: Sir, it is again a piecemeal legislation that we are having. The question before the members of this House is whether the money, which is to be forefeited to Government after the lapse of 5 years, should be utilised by Government for its own use or handed over to the District Boards. If it is possible for us to devise some means by which this money can be retruned to the tenants, who legitimately can lay a claim to this money if the landlords refuse to take it, then that will be the best thing under the present circumstances. But circumstanced as we are, we must devote the money which is forfeited to Government in some way which is acceptable to the people of this country. The Government have no justification to forfeit this money, and, therefore it is only right, natural, and equitable, if the money is to be forefeited, that it should be made over to the District Boards, to be spent by the chosen representatives of the people in the districts from which the moneys have accrued. There is no other public body which is more competent to deal with this money, and the Government have absolutely no right to spend it in any manner they like. The District Board has got numerous functions which it will be useless for me to enumerate. The District Boards belong to the nation-building department, and because the District Board is the only institution, which looks after medical relief, sanitation, water-supply, agriculture, vaccination, etc.—I think the control of primary education will also be delegated to it—I submit that of all public institutions which have any claim to this money, that of the District Board should be regarded as foremost and paramount.

Then, as regards the warning given by the Hon'ble the Finance Member, I fail to see how he can say that after the money has been declared to be forfeited, he will have to show that money in the next budget as non-voted, if it has to be ear-marked for the District Boards, which would mean the taking away of the power of the Legislative Council to deal with this money just as they like. It is a preposterous proposition, I should say. To say that a sum of money which is realised under a particular Act of this Council cannot be diverted to any particular channel as this Council pleases, is to deprive this Council of its fundamental rights and functions. As has been pointed out by my friend Mr. J. C. Gupta, no such difficulty arises in the case of road-cess which is levied under a particular Act and which is devoted to a particular purpose named in the Act. The road-cess is

handed over to the District Boards, and where there is no District Board it is handed over to the District Road Committee. So, I fail to see why this particular provision cannot be made in the Bengal Tenancy Act in order to enable Government to hand over the money to the District Boards.

Mr. P. N. GUHA: Sir, I have every sympathy with the Hon'ble the Finance Member in his desire to swell the purse of this poor province, by taking any money that he can lay his hand on. The reason for which we want to make this particular provision in the Act, and by which we want to bind this Council as well as its successors, is that unless we do this, any proposal we may make to divert this money to any particular channel will not be accepted by my friend, the Hon'ble Sir P. C. Mitter. That is why we want to make this provision. This money does not belong to Government and they have no right over it. It is other people's money and they cannot keep it in trust for long. So it is only fair that this money should be diverted to objects which the people may indicate.

Sir, a few minutes ago the Revenue Secretary told me that the sum would be too insignificant to be of any use to the District Board. Never mind, let it be so. But why this anxiety on the part of Government to pocket this insignificant sum even as quickly as they can? Why is the Government reluctant to part with the money which belongs not to them but either to the landlord or to the tenant? This money should be devoted to purposes which would benefit the people of this country. With the help of this money we can remove malaria, spread education, supply drinking-water, and do other good things through the District Boards. We have been told that if we insist on this money being handed over to the District Boards it will have to be shown as non-voted in the budget; but this will be only for a couple of years, that is only till my friends are there. (The member here pointed to the Treasury Benches). I hope my friends on the other side will realise that we are not fighting with the Government: we are only asking the Government not to try to pocket other people's money so greedily. The money belongs to us and we want that it should be utilised for our benefit.

Dr. KUMUD SANKAR RAY: Mr. President, Sir, I find that since this motion has been moved the embarrassment from which Government have been suffering on a previous motion has not abated but increased. In the first place, they feel very embarrassed in having to keep an account of someone else's money which comes into their hands by some Acts of the legislature. And I presume that after having resisted the temptation to pocket the money for five long years, they now feel even more embarrassed to disgorge it even when it is

wanted for the benefit of the people for educational and other beneficial purposes. The money is paid by the poor tenants, and it is only right, as has been pointed out by my friend Mr. Guha, that it should be paid back to the people for their benefit. The plea has been put forward that you will be curtailing the power of the legislature if you ear-mark it for the District Boards. Now, Sir, those of us who have read the budget carefully every year and have seen the manner in which it is presented will bear me out that even in the transferred subjects out of ten items at least five or six are non-voted. So far as the powers of this Council are concerned, we already have too many restrictions, and this further restriction with regard to this money will not do us much harm. Sir, we have sufficient confidence in the elected members of the District Boards and in their ability to spend the money properly and usefully.

Sir, the next point that was raised by the Hon'ble Member from the Treasury Bench was that Government have to keep an unnecessary standing account for the money that is not forfeited. I take it, Sir, that Government do keep some accounts for the money which is forfeited. Now, if you make over the money which does not belong to you and give it for the benefit of the people, you will be saved all this trouble and unnecessary expense for keeping accounts.

With these few words, Sir, I support the amendment.

Babu SASI SEKHAR BASU: Sir, I support this amendment. I submit that Government ought not to take the money which the landlords fail to withdraw in time -I mean within five years. This money should be spent on some works of public utility, and I submit that the best agency through which this money should be spent is the District Board, which nowadays is practically composed of non-official members and which is run by non-official chairman and vice-chairman.

We know that the resources of District Boards are such that they cannot carry out necessary improvements for want of funds. Only the other day we were told in this Council that primary education could not be attended to because of want of funds. That is the position, Sir. This is a sum of money which cannot be claimed by Government by any manner or means and which Government is holding simply as a trustee. So there can be practically no limitation against it; if only for the purpose of avoiding keeping accounts of other people's money Government think that there should be a limit within which the landlords must take it otherwise it would be forfeited, then the best course would be for Government to make it over to the District Boards: one member said that the sum should be made over to Union Boards but he labours under a misapprehension for District Boards contribute to the expenses of the Union Boards and Union Committees

(which also raise rates) to carry out necessary works. The District Boards if they get this money will no doubt increase their contribution and so I support the amendment.

Babu MAHMATHA NATH ROY: I do not see on what canon of fair play or honesty Government can claim this money, and object to the amendment before the House. The Hon'ble Finance Member claims it as the revenue of the Government, but, Sir, it is too premature to say so. Only a while ago the Government pleaded inability to maintain for a long time the accounts of other people's money, but now the Government claims the money as its own; besides the question now before the House is whether it is to be the revenue of Government or the revenue of the District Board and the Hon'ble Finance Member cannot anticipate what he wishes to be the decision of the House.

Whatever difference of opinion there may be with regard to the question whether the forfeited money belongs to the landlords or to the tenants there can be no doubt that it does not belong to Government. It is, Sir, money put in transit by the tenant to the landlord and held in deposit by the Government, and I do not see how the Government can raise any objections when the people—both the landlords and the tenants—who are legitimately entitled to claim it, ask that it may be spent by the District Boards, their representatives, on works beneficial to them. Does the Government say that the District Board's funds do not need to be supplemented? Is not the Government aware that most of the District Boards are handicapped on the ground of inadequate resources to provide for sanitation, education and public works? And does not the Government feel that when the people want that their money should be spent by their representatives in such matters where it is most needed, their legitimate claims should be supported by the Government? With regard to this matter the two principal communities in the country to whom the forfeited money belongs are united; and it will only be an indication of fair play on the part of the Government if they accept the amendment.

Mr. W. H. NELSON: Sir, the amount we are concerned with at the present moment is about Rs. 50,000 per annum. It may increase in future, when some landlords' transfer fees may be forfeited. On the other hand, it is possible that it may not increase on that account, because when large sums are involved co-sharer landlords will find it profitable to go to the Kutchery and take the money that belongs to them, and in doing so—as they have to go in any case—they will sweep up all the unconsidered trifles which formerly were forfeited to Government; possibly the amount in future will be less. Anyhow we will take Rs. 50,000 for the purpose of argument. The income of District Boards in this province is Rs. 1,08,00,000. Of

this amount the proper income of a District Board according to the Act is Rs. 38,00,000 and the balance, rather more than Rs. 70,00,000, consists of grants from Government. It is possible that even with the help of this Government grant all the needs of District Boards are not met. But the District Boards cannot complain that, having regard to the finances of the province, they are badly treated. They get a sum of Rs. 70,00,000 annually. Now, if this Council says that a sum of half a lakh is to be ear-marked for the District Boards it does not mean that the District Boards will get Rs. 70½ lakhs. It means that the District Boards must get half a lakh of rupees per annum at least. They must get half a lakh per annum; and in face of the fact that the District Boards are getting annually Rs. 70 lakhs, what on earth is the use of this amendment? You are already getting Rs. 70 lakhs and by this amendment you are making it perfectly certain that you will get at least half a lakh a year. As a matter of fact you are getting Rs. 70 lakhs.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to point out that the figure quoted by Mr. Nelson as the proper income of a District Board is wrong. He said that it was Rs. 38,00,000, but I find that the figure for 1926-27 is Rs. 82 lakhs.

Mr. W. H. NELSON: The public works cess is granted by Government.

Mr. M. ASHRAF ALI KHAN CHAUDHURI: I have not heard any argument as to why this money should not be given to the District Boards. Government says that they have been granting money to District Boards. But what is the harm in giving this money to them also as it belongs not to Government but somebody else? Because it is money which is forfeited and because Government grant money to District Boards from other funds—is that the reason why this money, which does not belong to Government, should not be given to some institutions which this House would like?

It has been said with some emphasis by my learned friends opposite that this forfeited money is trust money. But I leave that aside and say that if the landlords were quick enough to take the money away from Government it would not have gone to the coffers of Government. So why should this money lapse? and why should it not be given to District Boards? No answer has been given to the question and it stands to reason, if you do not take away the money it lapses, and that is the natural course. But suppose the money is taken by the landlords, then how do Government get any benefit out of it? Government say that they have been paying the District Boards 7½ lakhs yearly. If this money is regularly taken away by the landlords you will have to go on paying all the same this sum to the

District Boards as before. So I cannnot understand the logic of the reasoning on the part of Government to object. Since this money belongs to the people and since they want it to be given to the District Boards it is but fair that Government should comply with the people's wishes.

The Hon'ble Sir PROVASH CHUNDER MITTER: If I take part in this evening's debate I do so in no expectation that the members of the House who have already made up their minds in advance and, if I may say so, they have made up their minds in advance because they think that whether it be Rs. 40,000 or a lakh, they are going to provide something more for the District Boards—if I take part in this debate it is not with the hope of swaying a single vote, but I do so lest it be said afterwards, three or four years hence when we may be working under a better constitution, that the real difficulties were not pointed out at the time. The first difficulty was pointed out by the Hon'ble the Finance Member. Under section 72D (3) (*iii*) of the Government of India Act, hon'ble members will find it provided that any expenditure prescribed by or under any law will be a non-voted item. The forfeited landlord's fee will therefore appear as a non-voted item and I am just stating that fact for the information of the House. Will the members waive their right of voting on this? When the members want that this money, whether Rs. 40,000 or 1 lakh, should go to District Boards, I can well appreciate their attitude, but it is my duty to point out clearly that under the statutory provision it will be a non-voted item and that the District Boards are not likely to be benefited for another reason I am going to state presently. Mr. J. C. Gupta pointed out, "what about the road cess—that was a non-voted item?" But there is this difference that the road cess and the public works cess do not belong to Government.

6-15 p.m.

Under the Act under which road and public works cesses are realised it is provided that the money goes to the District Boards, and therefore, as members are all aware, these cesses do not form any part of the budget. That disposes of the position arising out of Mr. Gupta's question.

I would like to make one point clear. Members have no doubt made up their minds, in advance, because they feel and feel strongly, that whatever grants the District Boards get from Government are utterly inadequate for the great demands on their purse. Only the other day, when we were dealing with a resolution, I tried to point that out. Out of a total revenue of roughly about Rs. 1,25,00,000 the District Boards get about Rs. 75,00,000 to Rs. 80,00,000 from road and public cesses, and here, I am not differentiating, although

there is a difference with regard to the Government's legal position about the two cesses. One of the cesses, however, was made over by Lord Carmichael's Government to the District Boards; the payment of one of the cesses is therefore not a statutory obligation on the Government. But apart from this cess voluntarily paid by Government—they pay the augmentation grant and various other grants—the total Government grant will be about 30 lakhs without taking into account the cess made over by Lord Carmichael's Government. Let me assume for the purposes of the present discussion that the landlords' fees will amount even to 1½ lakhs or 2 lakhs or 3 lakhs. What is the position? The position is that the Council to-day in discussing the Bengal Tenancy (Amendment) Bill propose to decide in advance for all time to come by invoking the provisions of the Government of India Act, that the forfeited landlords' fees, whatever the sum may be, a variable sum, will always go to the District Boards, although that decision may not add a single rupee to the income of the District Boards. For years past the grants to District Boards were not enough, and there was a very natural disappointment. Now, either the Government were anxious to help the District Boards, but for want of funds could not, or it was not anxious to help. Take it either way. How will this statutory provision help the District Boards? My hon'ble friend to my left, who is unable to balance his budget, may say, "In order to find that money I must deduct an equivalent amount from somewhere" and he may deduct an equivalent amount from one of the Government grants. How will you be benefiting the District Boards? So you are only tying your hands for the future. That is the aspect of the question I desire to bring to the notice of the House.

There is another point. At the present moment take for example the income of the year ending 31st March 1927. The total amount received on account of landlords' fees during the year was Rs. 1,76,430 and the total amount paid to the landlords was Rs. 1,31,320, leaving a balance of about Rs. 45,000. This is not a large sum. Some are under the impression that these amounts being landlords' fees under Chapter III, and as in future under Chapter V the landlords' fees will increase considerably, perhaps the forfeited sum will increase very considerably. That may or may not be so, and the reason may be that at the present moment the landlords' fees being made up of small sums like 2 annas, 4 annas, etc., the landlords may not care to withdraw small sums, but in future, when it will be a question of hundreds or thousands, they are likely to be more anxious to withdraw, and so the forfeited amount is not likely to increase much. Assuming even that the forfeited amounts will be large sums like 5 or 6 lakhs, would you be acting wisely by imposing upon yourselves this statutory obligation? Would you really get one pice more? And the root-cause of this amendment is the

anxiety of my friends to get more money for the District Boards. By passing this amendment you are only curtailing the powers of the House, but do you give one rupee more to the District Boards? I say an emphatic No. If you could give more, I could understand your reason.

One other point and I have done, and that is this. It has been said that when it is not the Government's money, why should Government keep it? To this I may reply that not a single rupee goes to the pocket of Government, be it from Land Revenue or from Excise or from any other source of revenue. All go to serve certain public purposes. There may be considerable difference of opinion as to whether the Government budget should be framed on the lines on which it is done, but you should take the existing facts as they are. Whether the present Government do or do not frame their budget in the way in which they should, you cannot compel the Government to pay more to the District Boards. I know my words will not make any difference in your voting, but still I have emphasised these points in the hope that our successors will not be able to charge us later on that we did not make the position clear to you.

Srijut NAGENDRA NATH SEN: On a point of information from the Hon'ble Member.....

Mr. PRESIDENT: The Hon'ble Member is not bound to give any information at this stage.

I shall put amendment No. 146.....

Rai HARENDRANATH CHAUDHURI: On a point of order, Sir. The amendments that are now before the House are all of the similar nature, but so far as amendment No. 154 is concerned, it is, I think, better worded than any other amendment. When all the amendments will meet the same fate, whichever amendment is put to the vote, would it not be better to put amendment No. 154?

Mr. PRESIDENT: I have no objection to do so. If you think that amendment No. 154 is more comprehensive, I shall certainly put that.

The motion that the following be added at the end of proposed section 18C, viz., "to be credited to the District Boards within whose respective jurisdictions such fees accumulate" was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjee, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.

Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Bose, Babu Bejoy Krishna.
Bose, Mr. S. C.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, Rai Harendranath.
Choudhury, Maulvi Khorshed Alam.
Das Gupta, Dr. J. M.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Haque, Khan Bahadur Maulvi Azizul.
Himatsingka, Babu Prabhu Dayal.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
Ismail, Khan Bahadur Maulvi Muhammad.
Kasem, Maulvi Abul.
Khan, Babu Debendra Lal.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Mozzam Ali.
Khan, Maulvi Tamizuddin.
Lala, Babu Sarada Kripa.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakanath.
Mukerji, Mr. S. C.
Naskar, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahim, Sir Abd-ur-
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sarker, Rai Sahib Rebati Mohan.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sulaiman, Maulvi Muhammad.
Suhrawardy, Mr. H. S.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Dash, Mr. A. J.
Dowding, Mr. T. W.
Drummond, Mr. J. G.
Eddis, Mr. A. McD.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. N.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Goenka, Rai Bahadur Badridas.
Gupta, Rai Bahadur Mahendra Nath.
Hopkyns, Mr. W. S.
Hussain, the Hon'ble Nawab Musharruf, Khan Bahadur.
James, Mr. F. E.
Luke, Mr. N. R.
Maguire, Mr. L. T.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
McCluskie, Mr. E. T.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nazimuddin, Mr. Khwaja.
Nelson, Mr. W. H.
Parrett, Mr. P.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.

The Ayes being 67 and the Noes 41, the motion was carried.

Mr. PRESIDENT: Having regard to the fact that this amendment has been carried, amendments up to No. 160 do not arise.

The following motions were therefore not put as they were covered by the foregoing decision of the Council:—

"That in clause 18, to the proposed section 18C the words 'and by Government made over to the District Board' be added at the end."

"That in clause 18, to the proposed section 18C the following shall be added, namely—'and shall then be transferred to the District Fund.'"

"That in clause 18, in the proposed section 18C, last line, for the word 'Government,' the words 'District Board' shall be substituted."

"That in clause 18, in the proposed section 18C, the following shall be added, namely—'and shall be credited by the Government to the District Fund of the district in whose revenue register the parent estate is borne.'"

"That in clause 18, in proposed section 18C, in line 11, for the word 'Government,' the words 'local Union Boards or Union Committees to which the lands concern' shall be substituted."

"That in clause 18 the following be added at the end of proposed section 18C—'and the forfeited amount shall be earmarked for the improvement of the agriculture of the district.'"

"That in clause 18, to the proposed section 18C the following proviso shall be added, namely—

'Provided that where the landlords are registered proprietors, the money in deposit shall be credited to the revenue account of those proprietors to whom the money is due:

Provided also that if the Government elects to forfeit the money, due notice of such forfeiture shall be given by the Collector to the persons interested, by registered post, at least six months before the date of forfeiture.'"

Adjournment.

The Council was then adjourned till 2-45 p.m., on Friday, the 17th August, 1928.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Friday, the 17th August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, and 114 nominated and elected members.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

Khan Bahadur Maulvi EKRAMUL HUQ rose to move his amendment No. 161.

Mr. W. H. NELSON: On a point of order. This amendment strikes at sections 20 and 21 of the Act which are not open.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, amendments have been made only to some sections of the Tenancy Act. They have not touched the sections on occupancy right which we, every well-wisher of the country, wished the Select Commitee would do. Under the circumstances as I cannot propose to amend a section which is not amended, while keeping myself within the law I could only press for giving every raiyat or under-raiyat the occupancy right who holds lands situated in a village where he permanently resides or is induced on such land whether before or after the passing of Bengal Tenancy (Amendment) Act, 1928, by newly adding this clause to clause 19 which is amended. I hope that every representative of the people ought to concede higher rights to the tillers of the soil.

Mr. W. H. NELSON: May I point out that the Khan Bahadur himself admits that he is trying to amend sections 20 and 21 under the cover of another section of the Act?

Mr. PRESIDENT: What I find is that this amendment has also escaped our vigilance. It affects section 20 although apparently it is an amendment to section 19. I therefore rule it out of order.

The following motion was therefore ruled out of order:—

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 19, to proposed section 19 (*1*) the following shall be added, namely—"and every raiyat or under-raiyat who holds lands situate in the village where he permanently resides, or is inducted on such land whether before or after the passing of Bengal Tenancy (Amendment) Act, 1928, shall be deemed to have acquired a right of occupancy in that land."

The following motion failed:—

Babu AMARENDRA NATH GHOSE to move that in clause 19, in proposed section 19 (*2*), line 2, the words "or clause (*iii*)" shall be omitted.

The following amendments were called but not moved:—

Babu NAGENDRA NARAYAN RAY and Khan Bahadur Maulvi EKRAMUL HUQ to move that clause 20 shall be omitted.

Babu AMULYA CHANDRA DATTA to move that in clause 20, sub-section (*2*) of proposed section 22 be omitted, and in its place sub-section (*2*) of section 22 of the existing Act be inserted.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: I beg to move that in clause 20, the proviso to the proposed section 22 (*2*) be omitted.

Before 1885 the doctrine of merger did not apply in the mufassals of Bengal and the judicial decision repeatedly pronounced it. The doctrine was first introduced in the land laws of Bengal by section 22 of Act VIII of 1885. In that Act the law was confined to sole landlords, but by the amending Acts of 1907 and 1908 they were extended to co-sharer landlords in Bengal and East Bengal respectively. The law of West Bengal, vide clause (2), is vague and undefined; it does not say what the status of the co-sharer landlord transferee would be in respect of transferred holding, but the East Bengal Act says that he would be proprietor or tenure-holder as the case may be. This even does not remove fully the vagueness. So the Bill drafted by Sir John Kerr's Committee says that the "interest thereafter held by such proprietor or permanent tenure-holder in virtue of such acquisition shall be deemed to be a permanent tenure created in respect of such lands under the operation of this sub-section." Thus a new right or permanent tenure is created in respect of the transferred lands by the operation of this sub-section. This is at present wanting in the present law—which is vague,

undefined and unworkable. Even the proposed amendment of Sir John Kerr's Committee is not fully workable.

Take a concrete case from the land tenures of Bakarganj. There are 15 grades of tenure-holders above the raiyat (karshadar) to the proprietor (zamindar). The lowest grade is mirash-karsha and above that is kaimi-karsha, vide R. C. Dutt's chart published in Rampini and Finucane's or Ami. Ali and Finucane's edition of Tenancy Act. A and B are equal co-sharers of a mirash-karsha, C is a raiyat under them, B purchases C's holding—now what is the status of B with respect to the purchased holding? What is the denomination of his right now? There are many experienced Settlement Officers here including the Director of Land Records. I put to them how they would record the half share of the purchased holding of C under A who has not purchased. What name they would put to B's right with respect to this half? What would be the name of this Statutory created permanent tenure? There is no grade left between mirash-karsha and karsha. Again if A is to sue B for the half share of the rent how in the plaint B's newly created statutory permanent tenure is to be described in Bengali language. There are anomalies that arise under the present law where there are numerous subinfeudations.

Then again the co-sharer landlord B pays for and purchases an occupancy right and at once gets by his purchase a statutory created permanent tenure, he pays for stone and gets loaves instead. Why should he get a higher right to the detriment of his co-sharers?

Turning to his co-sharer A the present law prejudicially affects his interest. First of all he would be unwilling to get his co-sharer as his tenure-holder tenant. Secondly under the present law it is non-transferable and he can but for the provisions in clause 2 take khas possession of his half from which he is debarred by the statutory created right. Then, again, if this Bill is passed he would be deprived of his share of the transfer fee as the right of the purchaser becomes automatically permanent tenure. Thirdly, permanent tenure being transferable the co-sharer A who does not purchase is for ever deprived of the transferred fee if the newly created right is again transferred by B to some other person. Lastly, it would give undue and unfair advantage to more influential, crafty and adventurous co-sharers, who, taking advantage either of the weakness or absence of his co-sharers, would purchase most of the holdings in the tenure and thereby get permanent tenure right to those lands and can very well sub-let them to the self-same tenants. Thus practically the tenants become ultimately the tenants of one co-sharer. This is called Zimba system in Bakarganj and this has been the cause of ruin of many families in my district.

Thus I have clearly shown that the present law or the proposal of Sir John Kerr's Commitee is not only unworkable but highly prejudicial to the other co-sharer.

For the purchaser co-sharer also the present law is a hard one. If a stranger by his purchase can acquire right of occupancy to the purchased land why should he be deprived of it? If for some reason the tenure is sold he can fall back upon this protection with respect to the purchased land and his raiyati right will not be gone.

It is sometimes said that a man should not be landlord and tenant at the same time, i.e., he should not hold two rights himself. This is not the law of the land. Section 22 deals with the acquisition of occupancy right by the sole landlord or co-sharer landlord and the doctrine of merger has been applied there, but there is no such doctrine of merger in cases of tenures. One person may be owner of different grades of tenures and he can keep them and use them separately if he likes—here it depends entirely upon his option. Again there are many persons who are landlords of some tenants but are themselves tenants of others and have khas-khamar lands which they either cultivate themselves or cause them to be cultivated by labourers or bargadars.

Therefore the only consistent proposition of law would be that when a co-sharer landlord purchases a holding he will hold it as a raiyat with its right of occupancy and other accompanying incidents.

The introduction of the proviso to clause 2 is an innovation upon the Select Committee's report. If the co-sharer purchaser in a voluntary sale can acquire right of occupancy, why should it be denied in rent sale? If a stranger third party purchases in rent sale he acquires the full right and there is no reason why the co-sharer who is interested in the holding as rent receiver and to whom the right to the soil partly belongs should be deprived of that right? When a co-sharer landlord purchases a holding in rent sale he does so with the knowledge of his other co-sharers, who are moveover parties in the rent suit as well as in the execution proceeding and before sale they get notice of the sale. Thus in the case of rent sale the non-purchasing co-sharer practically acquiesce in the purchase of the co-sharer. It is therefore more reasonable that he should get all the rights of the tenant.

Mr. PRESIDENT: I forgot to call upon Khan Bahadur Maulvi Ekramul Huq when Kazi Emdadul Hoque did not respond. The Khan Bahadur had given notice of a similar amendment and so I should give him a chance to move amendment No. 167.

Khan Bahadur Maulvi EKRAMUL HUQ: I beg to move that in clause 20, the proposed sub-section (*2*) of section 22 shall be omitted.

If a reference is made by this House to the old section as it stood, it would be found that even a joint proprietor if he happened to get a tenant's holding did not get the right to hold as a tenant. I refer to clause (*2*) of section 22 of the old Act: "If the occupancy right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, such person shall have no right to

hold the land as a raiyat but shall hold it as a proprietor or a permanent tenure-holder as the case may be and shall pay to his co-sharers a fair and equitable sum for use and occupation of the same." From this you will find that the committee which drafted the Bill has abrogated that section 22 and done away with clause *(2)* of that section and instead created a new right for a permanent tenure-holder or a joint landlord. From this you will find that efforts were made in the Select Committee to make such laws as would give more and more powers to the landlords and satisfy their infamous greed for land-grabbing and to make the position of those who ought to be in possession of their lands as so many, not cultivators, but serfs, and so many hewers of wood and drawers of water. The landlords become the owners of the land and they know they can do whatever they like with it. They may compel other tenants to take leases of those lands on much higher rents than what were actually paid by the outgoing tenants. These people, would compel tenants whose only source of a much higher income is from lands to complacently agree to rack-renting. Thus you are giving more rights to the proprietors. Are you justified in doing so? Now as this matter has come up before the House you become Judges, whose duty it is to support justice, to support right and not to support that proviso which I want to omit. As for my learned friends the zamindars and their supporters, the Swarijsts I can only appeal to them that they should not take advantage of the fact that the Tenancy Act is being amended and take more and more powers in their hands and deprive the tenantry of what advantage they possessed before. It is the duty of every member of this House to see that this particular clause *(2)* does not find a place in the Bill that is before us. This is all I have to say on the point and I hope that my appeal to all the members of this House will not go in vain.

Khan Bahadur Maulvi AZIZUL HAQUE: I have tried to catch my friend Khan Bahadur Maulvi Ekramul Huq, but I have not been able to follow him so far as his amendment is concerned. I wish to speak a few words about amendment No. 175 moved by Rai Satyendra Nath Roy Choudhuri Bahadur. My friend began by stating that under the present scheme of the new Tenancy Act a certain amount of right is being given to co-sharer landlords to bring suits. My friend is forgetting that under the new scheme of tenancy law as drafted it is proposed that a co-sharer landlord will be able to institute a suit against a body of tenants by making the other co-sharers a party in the suit.

Now, what is this proviso? The proviso says: "If a co-sharer landlord purchases a holding of a raiyat at a sale in execution of a rent decree or of a certificate under this Act he shall not hold the land comprising such holding as a raiyat but shall hold the land as proprietor or tenure-holder." The fact is that a co-sharer landlord has got an advantage of a rent decree in a new scheme, so it is only fair that he

should not be allowed to get occupancy right in that holding in execution of a decree because he is practically the entire body of landlords in the proposed scheme. Under the old scheme he could not stand as a sole landlord or in the place of an entire body of landlords. Now, if he brings in a rent suit against the tenant making the co-sharers party, surely he cannot get the right of occupancy. The ultimate effect of retaining the status of the occupancy right would be that when he settles the holding, the tenants gets the right not of a raiyat but of an under-raiyat. But if a co-sharer purchases a holding in a sale and acquires the right of a proprietor, he has to settle the land with a raiyat. Therefore the difference will be this: Under the present proviso, as framed, if a co-sharer brings a rent sale and after purchase if the co-sharer landlord settles the land with a tenant the position of that man will be that of a raiyat. The effect of the amendment will reduce the tenant to an under-raiyat. We do not want to increase the number of under-raiyats more than is necessary. I oppose this amendment. As the section stands it is quite necessary in the interest of the country. I can give several instances of presumptions against landlords. My friend his referred to the Act of 1885; I will give another instance. When in that Bill the right of pre-emption was proposed it was further provided that if the landlord after exercising the pre-emption settled the land with any person that person should automatically get occupancy right.

Khan Bahadur Maulvi EKRAMUL HUQ: Which section is he discussing?

Khan Bahadur Maulvi AZIZUL HAQUE: I am discussing the proviso. I am not going to the amendment of Khan Bahadur Ekramul Huq.

I may say that in the original Bill of 1885 if the landlord exercised the right of pre-emption he could not step into the shoes of the tenant, but he would be a proprietor all the same and, if he settled land with any person, that person would automatically receive the occupancy right. The position here is this: If the co-sharer purchases an interest in a property he becomes a proprietor himself. If ultimately he settles his land with a raiyat the tenant will automatically acquire the occupancy right. So the deletion of the proviso will affect the interests of tenants.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I wish to say just a few words in regard to the amendment of Khan Bahadur Ekramul Huq. He proposes to delete clause 2 of section 22. This is a clause which proposes to give to a co-sharer landlord a right which he undoubtedly enjoys under the present law. A perusal of the two sections of the present law for East Bengal and West Bengal will show that the law as it stands in East and West Bengal is not the same and

is rather anomalous. With a view to making the position of a co-sharer landlord, who purchases a holding which may be in a joint estate, clear this clause (2) of section 22 has been enacted and so far as the reasons which have been advanced by Khan Bahadur Ekramul Huq are concerned it is for the House to consider as to whether those reasons are good enough for deleting the clause. If the clause be deleted, what will remain. Only clause (1) of section 22 will remain, that is to say, the provision that when a proprietor or permanent tenure-holder gets an interest in a holding of a raiyat then the doctrine of merger comes in and he becomes a proprietor or permanent tenure-holder with regard to that holding. Then if he is a co-sharer landlord the law will remain unaltered, but there is nothing in the Act as to what his status will be. It is necessary to define the status of a co-sharer landlord who purchases a holding in a joint estate. So clause (2) of section 22. ought to be retained.

As regards the proviso, it is to this effect: "Provided that a co-sharer landlord who purchases a holding of a raiyat at a sale in execution of a rent decree or of a certificate under this Act shall not hold the land comprised in such holding as a raiyat but shall hold the land as a proprietor or tenure-holder as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same. In determining from time to time what is a fair and equitable sum, regard shall be had to the rent payable by the occupancy raiyat at the time of the transfer and to the principles of this Act regulating the enhancement or reduction of the rents of occupancy raiyats."

There are it seems to me two objections to this provision. The first is that there is no substantial ground for making a difference between the position of a co-sharer landlord who purchases or gets by transfer or succession or in any other way an interest in a raiyat's holding in a joint estate and the position of a co-sharer landlord who gets the same interest not by private transfer or in any other way but in a rent sale. So far as his position is concerned the position seems to be the same in both cases and there is no reason why in one case it should be said he will acquire the position of a raiyat and in the other that he will not acquire the position of a raiyat.

3-15 p.m.

The second objection is that the draft of this clause, as it stands in the proviso, does not definitely state as to what would be the rent that would be payable by such a co-sharer who happens to be the purchaser of a holding in a rent sale, because it is only stated that he shall pay a fair and equitable sum; and that it would have to be determined from time to time what a fair and equitable sum will be, regard being had, of course, to the rent payable by the occupancy

raiyats. That makes the procedure surely complicated and when a co-sharer purchases a holding in a rent sale he does not know, nor do the other co-sharers know, what the rent payable for the holding will be. Then, Sir, with regard to another question which may be raised in this connection, viz., what will be the protection given to the other co-sharers. Now, Sir, provision has been made in section 148A of the present amending Bill, and, if that is passed, it will be seen from that section that there is absolutely no occasion for any apprehension that it will be possible for any co-sharer to defraud the other co-sharers in any way, because if a co-sharer landlord institutes a suit for his share of the rent, summons will have to be served on the other co-sharers who will have an opportunity of appearing and putting in written statements and the case will be fully heard in the presence of all the co-sharers. In execution of the decree notices will be served on the other co-sharers and there is an ample opportunity given to all the co-sharers to safeguard their own interests. If, after all, a co-sharer landlord happens to purchase a holding, well, the point which arises is this: what is the reason that his position should in any way be different from the position of a stranger who may happen to purchase the holding in a rent sale? So far as I can see, Sir, the position is absolutely the same as to who purchases the land, viz., a co-sharer landlord or a third person who intervenes and becomes the purchaser. The position in both the cases will be the same and he will step into the shoes of the outgoing tenant and the co-sharers will not in any way be prejudiced. From that point of view I oppose the amendment moved by Khan Bahadur Maulvi Ekramul Huq and support the amendment moved by Rai Satyendra Nath Roy Choudhuri Bahadur.

Mr. F. A. SACHSE: Sir, the last speaker has dealt sufficiently with amendment No. 167. So far as I can see, it will defeat its own object, because co-sharer landlords will be able to buy raiyati holdings without any restrictions as much as they please. It will leave the law very uncertain, because there will be no provision as to what is to happen if part of the landlord's interest and the raiyat's interest become vested in the same person The law will say nothing as to what is to happen if one of several co-sharers buys a raiyati interest.

Now, Sir, coming to the other amendment, No. 170, Rai Satyendranath Roy Choudhuri Bahadur pointed that the proviso to the new clause 22 *(2)* was not in the original Act. But I am told by lawyers that it was the case law before the amending Act inserted it. Therefore, the amendment of 1907 simply gave effect to the existing case-law. A statement has also been made to the effect that this provision, as it stands in the Bill, was not in the Bill of the Select Committee. This is a mistake. The proviso appeared in the Select Committee's Bill as section 158B. Only one member put in a note of dissent against this proviso.

Then, it was stated that anomalies will arise for co-sharers under section 22 (*2*), which is complicated. There must be anomalies and anomalies now arise under section 22 (*1*); they would still arise if section 22 (*2*) and the proviso were omitted.

The member, who moved this amendment, said that the law of merger does not apply to tenures: but surely it does. If a tenure-holder with a sixteen annas' interest, buys a raiyati holding, then the two rights merge. The principle of law in section 22 is not at all what the mover stated it to be. There is no objection in the laws to one person getting two or more interests in the same land. The principle here is quite different. The intention is that if a non-cultivator or middleman buys a raiyati holding in his own estate, he can hold it khas as long as he chooses. If he chooses to sublet, he must sublet to a raiyat and not to an under-raiyat. That is the principle of the law of 1885.

Then, we are told that there is no substantial ground for making a difference between a landlord who buys a holding at a rent sale and one who buys it privately. To that I give an emphatic "No." If he purchases at a rent sale he can annul encumbrances: if he purchases privately he merely steps into the shoes of his predecessor-in-interest. If there is an under-raiyat in the land, he must respect the rights of that under-raiyat.

It is understood that from the lawyer's point of view there are grounds for considering that there ought to be a difference in the treatment of a compulsory sale which takes place at the instance of the landlord and a private sale. In any case, Government thought that, by allowing co-sharer landlords to have the benefit of rent decrees as opposed to money decrees and to hold raiyati interests in their own estate, which this Bill gives them, they had made sufficiently great concessions to the landlords.

It has to be considered what would be the effect of the omission of the proviso. First, would it seriously prejudice the tenants by encouraging landlords to sell up holdings on every pretext? Secondly, would it really benefit the landlords? Whether the proviso remains or not, co-sharer landlords will have the right, under this Bill to turn out under-raiyats. They are not protected interests, not even under-raiyats with occupancy rights by custom. The only unfairness, if any, if the proviso remains, is that when a co-sharer landlord purchases at a rent sale, he cannot, after a number of years, sublet it to an under-raiyat, he must sublet to a raiyat. We think that we have given sufficiently good rights to under-raiyats and that it does not make much difference to the landlord whether he lets the land out to a raiyat or to an under-raiyat. There is no restriction on the initial rent in either case. What then is the landlord afraid of? Is he afraid that the rent he fixes will be reduced by a civil court under the provisions of Chapter V? I think,

Sir, that I have given fairly good grounds for objecting to the omission of this proviso.

Khan Bahadur Maulvi EKRAMUL HUQ: May I rise on a point of information? I ask whether the proviso proposed in my next amendment will cover the defect which Mr. Sachse has pointed out in regard to my amendment now before the House.

Mr. F. A. SACHSE: The Khan Bahadur wants to know what would happen if his amendment No. 181 be carried. I think it will re-introduce commutation, which it is proposed to abolish by the omission of section 40 of the Act. That amendment has no chance of being passed.

Rai HARENDRANATH CHAUDHURI: Sir, the amendment before the House relates to section 22 of the Bengal Tenancy Act. That section, it is commonly held, enunciates the doctrine of merger so far as it has been made applicable to the Tenancy Law of the province. As a good deal of misconception appears to prevail on the question I propose to go into a little bit of history. The history of the application of the doctrine of merger to the Tenancy Law in this country furnishes an interesting study. It is a history of the judiciary pulling on the one side and the executive on the other—the judiciary with its regard for the differing conditions in this country and for the principles of justice, equity and good conscience, and the executive with its passionate regard for its own policy and its fond attachment for the legal fictions created by the said policy. Thus as early as 1868, in the case of Womesh Chandra Gupta vs. Rajnarayan Roy (10 W. R.) Peacock, C. J., is reported to have said—

> "My impression is that the doctrine of merger does not apply to lands in the mufassal of this country."

and L. S. Jackson, J., concurring with the Chief Justice added in the same case—

> "I am not aware of any solid foundation for the opinion that the doctrine is any part of our mufassal law."

In 1869 the question of applicability of the English law of merger in the mufassal of this country was raised and Markby, J., held in the case of Rushton vs. Atkinson (11 W. R.),

> "That assuming the English law of merger was applicable, the dry rule of merger according to the Common law of England should not be applied but that rule should be modified by all the equities which an English Court of Chancery would import into the consideration of the case."

"There can be no doubt," says one authority, "that the rule of Common Law, which is highly technical, ought not to be applied to the dealings of parties in the mufassal of this country. It is not only

opposed to the well-known practice of landlords and tenants, but it does not rest on any broad intelligible principle of justice and ought not to be applied to Indian transactions. At all events, its operation ought to be excluded or defeated, wherever there are clear declarations of intention and unequivocal evidence of conduct of the person, who has become the owner of the superior as well as the inferior right (I. L. R. 10 Cal., 1035). In Savi vs. Punchanan Roy (25 W. R., 503) the High Court of Calcutta declined to follow the technical rule of English law, and ever since it has been taken to be established, that the rule does not apply in India. The decision in Prosunno Nath Roy vs. Jugut Chandra Pundit turns upon the facts of the particular case and not upon the application of the maxim 'Nemo potest esse tenens et dominus.' In England, too, this strict rule of Common Law was found to work injustice and required to be modified in equity, and at last the judicature Act of 1873 distinctly laid down—'there shall not, after the commencement of the Act, be any merger by operation of law only of any estate the beneficial interest of which would not be deemed to be merged or extinguished in equity.'"

That was the position before 1885. In 1885 the Government enacted the present section 22 of the Bengal Tenancy Act, which applied the doctrine of merger to the case of the landlords' or tenure-holders' purchase of the raiyati jama. The one reason that was given for this change in law obviously intended to counteract the decisions mentioned above was that the landlord should not be allowed to purchase occupancy raiyati holdings, which, in other words, amounted to saying that his purchase of the raiyat's holding should be rendered nugatory and that he must pay for acquiring, what may best be termed, a dead head of abstraction if not a mere obligation.

The High Court, however, was not easily persuaded to accept this innovation and obvious inequity which made an invidious distinction between a landlord purchaser and a stranger-purchaser in the case of voluntary as well as involuntary transfers. Even after the enactment of section 22 the High Court continued to assert "there is no law in this country which prevents one of several co-proprietors holding the status of a tenant under the other co-proprietors of land which appertains to the common estate." A Bench of five Judges sitting in the Letters Patent Appeal in Jawadul Huq's case affirmed in 1896 the decision of Beverley, J., in the following words:—

> "Sub-section (2) of section 22 of the Tenancy Act provides that if an occupancy right is transferred to a person jointly interested in the land as proprietors, the occupancy right shall cease to exist. It is not said and the sub-section cannot be understood to mean that the holding shall cease to exist but that the occupancy right which is an incident to the holding shall cease to exist. And there is nothing in the sub-section inconsistent with the

continuance of the holding divested of this right of occupancy which attached to it. The saving clause in the sub-section that nothing in it shall prejudicially affect the rights of any third person indicates also that the holding would for some purpose at all events continue to exist."

Eight years after followed the Full Bench decision in the case of Rammohan vs. Kachu (9 C. W. N., 249) which again approved of the decision in Jawadul Huq's case. Then followed the cases of Lalmohan vs. Jagir Sheik (13 C. W. N., 913) and Akhil Chandra vs. Hasan Ali (18 C. L. J., 262).

The Executive Government, however, could not rest satisfied with these rulings and again to counteract this second series of decisions of the High Court brought forward the amending Act of 1907. By a legislative violence, as it were, the Act of 1907 declared that even a fractional proprietor or a permanent tenure-holder purchasing an occupancy holding "shall have no right to hold the land as tenant but shall hold it as a proprietor or a permanent tenure-holder as the case may be." It further provided in effect that while such a purchaser will have to discharge the obligations of the raiyat vis-a-vis the other co-sharer landlords he will have none of the raiyat's rights or interests in the land vis-a-vis any sub-tenant.

These alterations introduced in the law by the amending Act of 1907 no doubt enforced the Government policy but as a leading authority on the tenancy law, I mean Rai Bahadur Surendra Chandra Sen, points out "have created a great anomaly" for it is not laid down anywhere as to what will be the status of a co-sharer landlord or tenure-holder to whom an occupancy holding is transferred in relation to other co-sharers.—

"The illustration shews" says Mr. Sen, "that when such co-sharer (who is the transferee of the occupancy holding) lets out the land for the purpose of collecting rent the sub-tenant becomes a tenure-holder; but what is his own position as regards his co-sharer is not clear; he cannot be a raiyat for if he is so how can his lessee be a tenure-holder; and if he is a tenure-holder under his co-sharer that would be an anomaly for the latter never let it out to him as a tenure, he had let it out to his predecessor as a raiyati holding."

The present Bill does not seek to remove this anomaly altogether. But while it desires to make a tardy justice to the co-sharer landlord's voluntary purchase it again makes by the proviso to sub-clause (2) of clause 20 an invidious distinction against him in the case of an involuntary transfer or auction-purchase. A co-sharer landlord purchasing a jama in an open court sale even in execution of his decree for rent is relegated

to a position inferior to that of a stranger-purchaser. What better equity can a stranger to a land claim in his favour than against one who has had an interest in the land—a co-sharer landlord's interest—even when a raiyati holding is sold by way of auction in an open court sale it is impossible to understand. It is impossible to understand, Sir, how the money value can at all be different or the purchasing power of rupee can at once come down when the consideration money is paid by a co-sharer landlord and not by a stranger-purchaser.

Then again it is said that if the doctrine of merger be not applied to such a case there will be two conflicting rights and interests united in the same person. If the interest of a co-sharer landlord and that of a patnidar or tenure-holder can be united in the same person, if the interest of a co-sharer in a ganti or howla and the interest of a se-gantidar or osat-howladar can be united in the same person there can be no reasonable objection to the unification of a co-sharer landlord's and raiyat's interest in the same person especially when raiyati holdings are now going to be made freely transferable to any and every person and be levelled up to the position of tenures. Nor should it be forgotten that in the proposed Bill itself it has been conceded that the occupancy right can be acquired by more than one person in the chain of sub-infeudation. While the framers of the Bill have admitted in one breath that such unification and addition can be allowed in the case of voluntary purchase they cannot, without laying themselves open to the charge of inconsistency, assert in the same breath that such unification is objectionable in the case of auction-purchase. Those who take their stand on amended section 22 of the present Act cannot also urge this objection as a question of principle for the very explanation added to the section shows that the occupancy raiyati interest can be united in the same person in some cases at least. If so, the question of principle cannot arise.

In conclusion I beg to point out, Sir, that such provision will be altogether ineffectual—the only result of it will be encouragement of benami transactions and ejectment of more under-raiyats than will otherwise be the case.

Summed up, therefore, the points for the deletion of the proviso are:—

(1) The law of merger was not applicable to mufassal Bengal before and so was it held in a series of decisions right up to the end of the last and the beginning of the present century.

(2) It is only a recent innovation and should have a very limited application.

(3) When the occupancy rights are going to be made transferable to any and every person in the altered circumstances there

is no reasonable ground to make an invidious distinction against the co-sharer landlord.

(4) In an open and auction sale a stranger-purchaser cannot claim a better equity than one interested in the land.

(5) The objection regarding unification of two interests in the same person cannot hold good for the grounds I have given.

(6) It is ineffectual—on the contrary, will lead to more ejectment of under-raiyats.

Babu JITENDRALAL BANNERJEE: Sir, I feel bound to oppose the amendment which has been moved by Rai Satyendra Nath Roy Choudhuri Bahadur, and I shall do it on a clear ground of principle and upon no ground of technicalities. In fact, I can assure you that I shall not use one word with reference to the term "merger" upon which we have had an eloquent legal discourse, a discourse which might have suited a kindergarten school of law, but which seemed to be rather out of place in a Legislative Council. It rather tickled my fancy to hear Rai Harendranath Chaudhuri cite with bated breath and whispering humbleness the opinions of European judges of the High Court. The reverence with which he quoted the opinions of Sir Barnes Peacock and Sir Louis Jackson almost made it appear as if he was referring to Noah or Abraham or any of the patriarchs of ancient times.

Sir, what is the present position? Under the existing law no distinction is made between sole landlords and co-sharer landlords. Whether the landlord is a sole or a co-sharer landlord, the result is the same if he acquires an occupancy holding. And there is reason good why it should be so. It is undesirable that two antagonistic rights should be united in one and the same person, viz., the rent-payer and the rent-receiver, the landlord and the tenant. It is highly objectionable that the same person should be the landlord and the tenant with reference to the same holding. Sir, it is this broad principle of law upon which the present provision is based.

What is the difference made by the amending Bill? The amending Bill confers one substantial advantage upon the landlord. If he is a co-sharer landlord, he can now acquire an occupancy holding, and his occupancy right will not cease to exist on that account. This is a substantial concession with which landlords, if they were wise and prudent, ought to have been satisfied. If they had any consideration for the rights of other people and communities, they ought to have been satisfied with this and thanked their stars. Sir, only one limitation has been placed upon this right. What is that limitation? It is that, if a co-sharer landlord purchases a holding at a rent sale, then he will not be able to possess it at the same time as an occupancy raiyat. For this also there is sufficient ground in principle. What is that sufficient reason? What will be the effect unless this proviso is there? The

effect will be that the landlords would put up occupancy holdings for sale and then purchase them in the name of one of their co-sharers. The result will be a gradual transfer of occupancy holdings to co-sharer landlords. The raiyats as a body will cease to exist—a contingency which no patriotic son of the country can contemplate with equanimity.

Maulvi NURUL HUQ CHAUDHURI: Sir, the sting of the whole clause lies in the sub-clause (2). The proposed change in the law will effectually curtail the rights and privileges of the cultivators by the operation of this sub-clause. I cannot understand on what principle or with what justification Government have proposed to alter the law so as to introduce an exception in favour of the co-sharer landlord.

3-45 p.m.

It has always been the policy of Government in this country to discourage landlords from acquiring occupancy rights and it is one of the principal reasons to which we owe the existence of the class of raiyats. Sir, the landlords are in a favourable position as compared with strangers who acquire the rights of the raiyats and it has been the policy of Government, therefore, to interpose some difficulty in the path of the landlords acquiring occupancy rights. The present amending Bill will remove these difficulties, and landlords by far the largest number of whom are co-sharers will be able to acquire occupancy rights and hold the lands of the country as occupancy raiyats. If this section be read in connection with the new proposed sub-section 26F which gives landlords whether they are sole landlords or co-sharer landlords the right of pre-emption, it will follow that the effect of the proposed amendment would be that it would reduce the cultivators of the soil to the condition of serfs.

I cannot understand, Sir, on what principle a distinction has been made between the two methods of acquisition, namely, acquisition by co-sharer landlords, of the rights of the tenant in auction sale for arrears of rent and acquisition by co-sharer landlords under section 26F, for example, in exercise of the right of pre-emption. The hon'ble member who spoke on behalf of Government did not point out the reasons of this distinction and he quoted some authorities which I am in a position to say is not in existence. As far as I am aware, Sir, there is no decided case of recent years which support the contention of Mr. Sachse that the principle embodied in sub-section (2) has been drawn from any decided case. I asked him to give me the benefit of knowing to which case law he referred, but I am sorry I could not elicit from him any answer. In my opinion it will be much better if we keep the section as it exists at the present moment and do away entirely with the proposed section 20 (2).

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, I rise to oppose the motion moved by Rai Satyendra Nath Roy Choudhuri Bahadur. The Rai Bahadur has complained that new rights have been given by this proviso to the tenants. The Rai Bahadur as you know, Sir, is a member for the non-Muhammadan general constituency of Barisal and that is why it seems he is generally opposing and moving amendments which are detrimental to the interests of the general run of people of the country. Is he right in his assertion that a new right is being given to the raiyats? Is it that the landlords are being divested of rights which they possessed and the raiyats are being clothed with those rights? Is that a fact? If he looks into the old section 22 as it stands it will be found that nothing novel whatsoever has been inserted by this proviso. On the other hand, he would find that the rights which the raiyats possessed and which actually belonged to them have been actually taken away from them; this proviso aims at preserving the little rights which are left to them, but even that, Sir, the Rai Bahadur and his ilk do not like that the raiyats should have. I may say, Sir, for the information of the entire House that there seems to be a conspiracy among the capitalists of this country to place all lands with zamindars and capitalists. The spirit of the Rai Bahadur's amendments aim at divesting the tenants of their rights to land and to make all the land centre with the capitalists, so that none but the capitalists would remain in this country with all the lands in the country as their own. Sir, will it be right and could this House for a moment think of supporting this amendment of the Rai Bahadur? Is it a fact, Sir, that the tenants have got more than they deserve or are going to get more than they possess? If that was the actuality then we should have listened to the arguments, but Sir, the actualities are just the other way and there is no alternative left for this House but to oppose the Rai Bahadur's amendment and to secure what little has been left to the tenantry by supporting my amending section. But will the House do so?

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: I rise, Sir, on a point of personal explanation. I have moved this motion after taking the views of my constituency and it has the concurrence of them. My constituency is still with me in this matter.

Sir ABD-UR-RAHIM: Sir, I oppose the amendment moved by Rai Satyendra Nath Roy Choudhuri Bahadur and support the amendment moved by Khan Bahadur Maulvi Ekramul Huq. I take my stand on two clear principles. The first is that I oppose any further frittering away of the rights of the raiyats and the second is that in this particular case the amendment put forward in the Bill is very badly drafted and is confused throughout. I had better take up my last ground first. If the hon'ble members will look at the provisions of the old law they will find that one principle is clearly enunciated throughout and that is that

landlords shall not be allowed by any transaction in the shape of purchase to swallow up the rights of the raiyats. If you look at old sub-sections (1), (2), (3) and (4), they are perfectly clear. As regards the purchase by the landlords holding the entire interest no change is suggested in the amending Bill. As regards the others a very serious change is proposed. In the case of co-sharer landlords purchasing raiyati holding the amending Bill divides that into two sections—one by ordinary voluntary purchase by means of conveyance, and the other by auction sales as opposed to voluntary sales. Why that distinction has been made, Sir, I cannot understand. There is nothing tangible on which that distinction can be based. Mr. Sachse has said that there was some ruling to that effect. If there is any ruling to that effect I would suggest that that ruling is contrary to the wording of section 2, but he has not cited any ruling although Mr. Nurul Huq Chaudhuri has directly challenged him on that point. If you look at sub-section (2) and the proviso you will see that the sub-section leaves everything vague except that the purchaser may acquire the occupancy right. But only when it comes to the proviso dealing with the rights of co-sharer landlord purchasing occupancy rights it makes clear that he shall hold these rights as a landlord. That is to say, a big alteration is made in the present law by the sub-section. Is that justified? The old sub-section 22 says: "If the occupancy right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder such person shall have no right to hold the land as a raiyat but shall hold it as a proprietor or permanent tenure-holder and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same." There is no ambiguity, no vagueness about it. If you look at the new sub-section (2), on the other hand, it says nothing in this section can prevent the acquisition by transfer, succession, or in any other way whatsoever of the holding of an occupancy raiyat or share or portion thereof together with the occupancy rights therein by a person who is or becomes jointly interested in the lands as a proprietor or a permanent tenure-holder. It does not make quite clear what the consequences will be. Old sub-section (2) however was perfectly clear on this. The consequences of the new sub-section would be that the occupancy rights would cease to exist. The whole policy of the law is that the landlords should not be allowed to swallow up the tenants' right under any pretext. They have the right to receive rent and they should be satisfied with that and not be allowed to encroach upon the rights of the raiyats or under-raiyats whose right is to cultivate, provided they pay the rent. If the raiyati rights are extinguished the land goes to the co-sharer landlord and in that case the entire right of the actual cultivator would be extinguished. I submit, Sir, there is no justification for their encroachment upon the rights of tenants. As I have observed before, so far as most of the amendments are concerned they take away some rights and

privileges which the tenants were enjoying before and make them over to the landlords. I say this should not be allowed to happen. The old section has been on the Statute Book since 1885 and its interpretation by the case law has made clear how far it goes and how far is does not. If you introduce an amendment of this sort you introduce confusion in the law as has been laid down by a series of decisions supported by the language of the section. The language of the old section is far clearer than the language of the present amending section.

4 p.m.

Whoever is responsible for the drafting of this amending Bill, I submit, has not been able to grasp what was intended by the old law. At any rate, whatever the intention was, so far as he wanted to introduce a change, he has introduced it in favour of the landlords by taking away the existing rights of the tenants.

Mr. JOGESH CHANDRA GUPTA: It is well known that, when there is a bad case, it is always usual to abuse the opponent's Counsel. We saw a clear example of this here. After my friend, Rai Harendranath Chaudhuri, gave ad seriatim the points in favour of his motion, I found that my friend, Babu Jitendralal Bannerjee, jumped on his legs first of all to read a lesson in kindergarten and, secondly, to point out some antagonism between the two rights as being his strongest argument for opposing the motion. I will first deal with this alleged antagonism and will request my friend, Babu Jitendralal Bannerjee, to read the sections or the subject matter under discussion before indulging in humorous speeches in order to become notorious.

Babu JITENDRALAL BANNERJEE: On a point of order, Sir. I object to the expression "notorious." Probably my friend, Mr. Gupta, does not know that it is unparliamentary.

Mr. PRESIDENT: Mr. Gupta, would you please withdraw tha expression?

Mr. JOGESH CHANDRA GUPTA: I should say "famous."

Babu JITENDRALAL BANNERJEE: I request him to withdraw that too.

Mr. JOGESH CHANDRA GUPTA: The explanation to the old section and the present section would at once show that these two antagonistic rights[illegible]ly to which Babu Jitendralal Bannerjee so eloquently spoke are capa[illegible]state being held by one person. I will read, for the information of the co[illegible]use and for the edification of Babu Jitendralal Bannerjee, the exp[illegible]n to the new section: "A person having a right to hold

the lands of an occupancy holding as a raiyat does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents." Similarly, the explanation to the old section ran thus: "A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder or by subsequently holding the land in ijara or farm." So according to the explanation of the old Act as also the explanation of the present Bill, there is clearly an incidence in which the rights of an occupancy raiyat and of a proprietor of the land can be held by the same person without a merger or without being united. Therefore, Sir, there is absolutely nothing in the argument that these are two inconsistent rights and they cannot be held together by the same person and must necessarily merge. If one examines it from the point of view of legal consistency, he will also see that this is the irresistible conclusion. The occupancy right is only a part of the right of the owner. The owner has got the full bundle of rights and the tenant by virtue of his occupation acquires certain rights which are called occupancy rights. When a 16-anna occupancy right is acquired by the landlord, we can well understand that there is a merger; but when only a co-sharer landlord acquires the right of occupancy, there is no merger because there is the right of the other co-sharer landlord subsisting and, therefore, it is only logical that, when a co-sharer landlord purchases the right of an occupancy raiyat, there should not be a merger. Hence we see this provision is in accordance with legal consistency, apart from from the question of justice. It has also been mentioned by Rai Harendranath Chaudhuri that Judges have held this to be so. Babu Jitendralal Bannerjee has twitted Rai Harendranath Chaudhuri for his reverence for the Judges when he was discussing certain legal matters on tenancy legislation, especially when Full Benches have pronounced certain opinions. Of course he in his usual way went into some—I should be very careful in using adjectives—flowery excesses of language and asked Harendra Babu to follow Mr. Abraham and Noah. We are here to discuss and pass important legislation. There is no room for mere flowery language or imaginative speech and much less for abuse. I have disposed of the point that two antagonistic rights cannot remain in the same person. I have, also attempted to show, for the sake of legal consistency, that there cannot be a merger.

The next thing that one has got to consider in connection with this amendment is this: we contend that if this proviso remains, then there will be an inconsistency—and it is in this way: you have given the right to acquire an occupancy right in a voluntary sale. The legal opinion is in favour of this and, therefore, Government has felt bound to give effect to the legal decision in the matter of [illegible]tion. But in the case of an involuntary sale, where the landlord [illegible]ch[illegible] by any means or manner, use any undue influence upon the oc[illegible]r as [illegible] raiyat, there is absolutely no reason, why there should be a b[illegible] rig[illegible]inst the

acquisition of the occupancy right which can, under the present amended Bill, be transferred to anybody—strangers, non-agriculturists or anyone else. No provision has been made to prevent these occupancy rights being transferred to any particular person. Of course some amendments have been tabled, but until those are accepted, the occupancy rights are transferable freely to strangers and other persons. There is absolutely no reason why co-sharer landlords should be debarred from acquiring this right in a court sale when there can be no question of his taking any undue advantage. I confess I have not been able to follow the last argument. It seems to be the main theme of some of the members of this House, that in every measure that is proposed by the Government and in every amendment that is discussed here they always foresee prospective injuries to the raiyat's rights. We have had enough of it at the time of discussing questions which only related to tenure-holders and the landlords or the landlords and the Government. Even, then, we have heard ad nauseum the story that the tenant's rights are jeopardised. Here there is absolutely no question of jeopardising any tenant's rights, because when occupancy rights are acquired, under this section it is quite clear that if the landlord again makes any arrangement of those lands which he acquires, he will not be able to defeat the rights of any third party thereby. That is very clearly provided in the existing Act and the present amending Bill. Therefore, no question arises about it.

There is some misapprehension somewhere that if a co-sharer landlord purchases a holding and if there is any under-raiyat or a bargadar, he would automatically be promoted. I submit there is absolutely no reason to think like that. The bargadar or a tenant or an under-raiyat will remain where he was before. The co-sharer landlord by acquisition of an occupancy right will not be able to interfere with the rights of any third party, much less would he be able to promote the rights of any third party who has done nothing to acquire higher rights.

This amendment of Rai Satyendra Nath Roy Choudhuri Bahadur has been moved in order to make this section consistent, in order to bring it in a line with the Judicial decisions, of the full Bench of the High Court, and there ought not to be any exaggerated grievance over this question.

Mr. SARAT C. BASU: Mr. President, the original provisions of section 22 will, I think, be considerably injured by this proposed section. One thing has not been noticed, and that is that this section is particularly harmful to the tenure-holders and patnidars. Under the present state of things the management of the property is practically under the control of the tenure-holders, and when the rents of raiyats fall in arrears, in most cases the raiyats' holdings are sold up and purchased by the tenure-holders in khas. There is one protection of

the tenure-holders that they will have the satisfaction of holding these lands as raiyati lands. Under the proposed section, if a holding is sold for arrears of rent or under the proceedings under the Tenancy Act, the property—the tenure vests in the zamindar like merger and the old tenure-holder will not have the satisfaction of retaining at least some of the lands as raiyati lands. But when the tenure is sold otherwise than as mentioned and the zamindar takes possession of the property, the whole tenure vests in the zamindar together with the raiyati lands. The result of the proposed section will be that in such cases when the rents of the raiyats fall in arrears, the tenure-holder will be able to purchase it in khas with the necessary consequence that the holdings will be sold for a paltry sum.

There is another danger in that respect, namely, the provisions of section 22 as drafted in the amending Bill will give rise to numerous cases of benami transactions. The tenure-holders or the zamindars who want to purchase it in khas in order to prevent merger will purchase those holdings in the names of their relations or officers. One of the objects of this legislation should be that there should be as little litigation as possible, but if you look to the provisions of the section, you will find that litigation has been lurking in almost every syllable of the section as drafted, which will be disastrous to the raiyats, zamindars as well as tenure-holders.

4-15 p.m.

There is another serious objection to this matter. We all know that merger operates when there is superior interest on the top, and below the superior interest far down is the subordinate interest. We are all familiar with the history that in Bengal under the Permanent Settlement we have got a peculiar state of things. It is not landlordism that has been given to the zamindars. Truly speaking and under the legal principles the zamindars or the tenure-holders are not the landlords of the raiyats, because the raiyats' interests had not been carved out of superior interest that lie in the tenure-holders whether permanent or not. Here the relation between the zamindar on the top and the raiyat at the bottom is an incidence which has been held by the recent judicial decisions as interest in the nature of partnership. The raiyat is not really the tenant of the zamindar or any superior holder, but the raiyat holds the land with the superior holder in partnership and therefore the rights accrue to the raiyats by the operation of the law and by the extension of the stated time that has been given either by the acquisition of the right on the one hand or by the diminution of the right on the other. Therefore, the interests of the landlord or the raiyat not being of the nature of superior interests and subordinate interests, both are the holders of the land in partnership as it were, some of the incidence of the proprietary rights have been given to the raiyats and

some other incidence with raiyatwari rights have been given by the Government and granted to the zamindars, the question of merger cannot arise. It is a question which governs the relation as between partner and partner. The question is who has got what interest in the land and I submit for the consideration of this House that this question of merger will not be productive of any boon to either party, whether the so-called landlord or the so-called tenant. It will not be productive of any good to the raiyat because by merger the raiyat does not lose anything. It is not productive to this immediate superior, namely, the tenure-holder or the zamindar as the tenure-holder and the zamindar do not get any additional benefit. It is for this reason that this enactment of merger is only a matter that has been borrowed from the English Law of landlord and tenant which had originally come into force in the mediæval times under the feudal system, but in Bengal at any rate we do not consider that the raiyat is a tenant of the superior holder, but he holds his land as his own, subject to some payment to the other man who is called the landlord. Therefore the two interests of the landlord and the raiyat not being of the nature of landlordism, there can be no relationship of landlord and tenant and one cannot be said to merge in the other. The provision that has been made is one of a series which has been made for the purpose of doing nobody any good. It is really a provision which, if passed, will be fruitful of litigation merely. The enactment is sought to be made for the benefit of my profession and nobody else. I should therefore submit to you that the whole section, as it originally stood in the Bengal Tenancy Act and which has been fruitful of so much litigation, has been made worse by the conditions that have been sought to be brought on by section 22 and the several clauses thereunder. One thing is remarkable and if I am permitted to use an unwholesome expression I may say that what is sauce for the gander ought to be sauce for the goose. But it is not sauce for anyone. It is not intelligible why merger has been made to operate in some cases and not in others. I seek in vain to find out the benefit that will result from the operation of this section. The more the raiyati interests in the land the better for the country. The more there are raiyats the more is the incentive to bring lands under cultivation and we cannot find how merger will be beneficial to one or the other. The only result will be that it will depreciate the interests of raiyat and, at the same time, will not give a corresponding benefit to the zamindar or the tenure-holder who is the immediate landlord of the tenant. I therefore, oppose the section itself as well as the amendments that have been proposed: both are equally bad.

Maulvi SYED NAUSHER ALI: Sir, I have listened with great interest to the instructive speech delivered by Mr. Sarat C. Basu. He has said that the interest of the landlord does not cover the interest of the raiyat and he has further made it clearer by saying that the raiyats'

interests are co-ordinate with the interests of the zamindars or the tenure-holders. He said that the raiyat is the owner of the land subject to certain conditions, subject to the payment of certain rent and so forth. Sir, I quite agree with him in that view and I say that the law regarding landlord and tenant in India is not the same as that in other countries. In that view of the case, Sir, I would submit that the raiyat wants protection and as there is no question of any merger at all, in the interests of agricultural development of the country, in order simply to encourage the raiyat in the cultivation of land, the zamindar or the tenure-holder should not be allowed to acquire this occupancy right which is the incidence of the holding of a raiyat. It can never be the incidence of the holding of the tenure-holder or a zamindar. Sir, I think a great deal of confusion has arisen by the use of the word "merger." There can be no question of merger in a case like this. In fact there has never been a question of merger. The interest of the zamindar is never superior to the interest of the raiyat. The interest of the tenure-holder is never superior to the interest of the raiyat. The interest of the zamindar is quite separate from the interest of the raiyat, so also the interest of the tenure-holder is quite separate from the interest of the raiyat. The interest of the tenure-holder is only to collect rent, to let out land for cultivation and nothing else. That being the interest of the tenure-holder, he should not be allowed to do anything more or less than the mere collection of rent. Well, in sub-section (2) there is an attempt to give the incidence of the holding of a raiyat to the tenure-holder as well as to the zamindar, which I hope this House will not permit.

Sir, I now come to the arguments put forward by Mr. Gupta and Rai Harendranath Chaudhuri. Mr. Gupta began by saying that it is well-known that when an Advocate has to support a bad case he begins by abusing his opponents. That may be his experience, Sir, but that is not our experience at least. He has tried to meet the arguments put forward by Babu Jitendralal Bannerjee to the effect that if this proposed amendment be passed it will give to the same person antagonistic right. He has tried to answer it by raising the question of merger. He has stated that if there is no question of merger in the case of acquisition by private treaty of the interest of an occupancy raiyat, why should there be any question of merger in the case of a rent sale by a co-sharer landlord? I have already made my submission on that point and I have stated that the question of merger does not at all arise in any case. It is due to the borrowing of an expression from a foreign country and from a foreign law that has created the confusion here. He has failed to meet the arguments put forward by Babu Jitendralal Bannerjee regarding that a landlord cannot be allowed to have an interest against himself. In fact he avoided it perhaps, because he found it difficult to answer it. Now, the second thing he has said is that there is a Full Bench decision and he has made much

of it. Sir, we are here for legislating and not for citing Full Bench decisions. If I had been at the Bar arguing a case before a court of justice I would have at once availed myself of the Full Bench decision and would have said "Here is the decision of a Full Bench, you cannot go beyond it, you have got to obey it."

4-30 p.m.

But we are free here to accept the decision of a single Judge against the decision of a Full Bench: we may prefer his decision to that of the Full Bench. We know how many a Full Bench decision have been overruled by the legislature, we are aware of Full Bench rulings of different High Courts differing from one another. Therefore, I submit that this Full Bench ruling is nothing and we should not rely upon this decision. What we have got to see is whether the proposed clause should be passed into law and for that purpose we have got to look into the particular section and to see that no facts escape our notice. We are here to legislate according to equity and on the circumstances prevailing in the country. The whole system of law in this country so far as land tenure is concerned is an archaic one based upon the peculiar circumstances of the country and therefore it would be wrong, I submit, to refer to a decision on this particular subject which is based on a principle which, as I have already stated, does not apply to the present case.

Then my learned friend Mr. Jogesh Chandra Gupta has tried to justify the original clause (2). He has also tried to make out a difference between a voluntary and involuntary sale. He has said that there are good reasons for exempting involuntary sales from the operation of clause (2) and that when there was no reason for undue influence being exercised by the landlord why should there be any merger. "There is case" said he for "merger in the case of an involuntary sale but there is no case for it in the case of a voluntary sale." Sir, cases of voluntary sales are often cases of most involuntary sales and that this fact is well known to all. We know the influence of zamindars on raiyats; we know the influence of tenure-holders on the raiyats; the raiyats are mere creatures in the hands of tenure-holders and zamindars and they may be made to do anything against their wishes. We the lawyer members of this House, are conversant with the fact that often improper advantage is taken by the tenure-holders and zamindars over the raiyats by the exercise of undue influence. This is a fact which cannot be denied and I hope this House is thoroughly convinced of the fact that the zamindars and tenure-holders are a class of people who are much superior in intelligence, in wealth, in power and are thus able to exert undue influence over the raiyats. I submit that if it be necessary to legislate for the purpose

of saving the raiyats by enacting the proviso to sub-section (2) of section 22, then it is all the more reasonable, it is all the more necessary, that the sub-section itself should be omitted altogether.

I will just say a word or two with regard to the very impressive speech of Rai Harendranath Chaudhuri. He has quoted a Full Bench ruling. As regards that ruling I have already referred to it. The second thing he wanted to show was that if this proviso be not deleted the result would be anomaly as has also been pointed out by Rai Surendra Chandra Sen Bahadur. The simple answer to that is so long as the land remains as it is, so long as the rights of the tenants and of the zamindars are not determined properly and satisfactorily, so long as this archaic system of landholding is not done away with, there will remain an anomaly in the Bengal Tenancy Act, and we will not be able to get rid of that anomaly. There are various anomalies but we cannot get rid of those anomalies when the principle on which the land system is based is an anomaly itself. I will not cite any decision but I will just cite what an eminent Judge said. He said that the reason of law is not logic but a sense of equity. Here we are legislating. Law is not always logical and I will only say that what we have got to do here is to look to the peculiar circumstances of the country, to look to the peculiar circumstances in which the different classes of people holding lands are situated in their respective positions and also to look to what equity requires. I will only say, on the very arguments advanced by Babu Jitendralal Banerjea that if the proviso be not deleted the raiyats as a class will cease to exist, that if sub-section (2) be not omitted the raiyats as a class will cease to exist because in very many cases these so-called voluntary transfers are in reality involuntary transfers.

With these remarks I support the amendment of Khan Bahadur Maulvi Ekramul Huq and oppose that of Rai Satyendra Nath Roy Choudhuri Bahadur.

[At 4-40 p.m. the Council was adjourned and it reassembled at 4-50 p.m.]

Rai MAHENDRA NATH GUPTA Bahadur: I beg to oppose all the amendments now before the House. I wonder what is the reason which makes it so difficult for so many learned gentlemen in this House to distinguish between the purchase by a landlord at a rent sale brought about by himself and other purchases. The distinction is obvious, but I wish to draw the attention of the House to one circumstance. We all know what a large number of ex parte rent sales do take place every year. We all know how in many cases summonses do not reach the raiyat at all—that certainly is not right, it is very wrong but there is no use blinking at facts and we should avoid to be theorists here. The fact remains that there are every year a large number of ex parte rent sales. The raiyat's holding is sold off and

is purchased by the landlord. What happens then ordinarily? The raiyat approaches the landlord, pays his dues, costs and perhaps something extra and he gets back his former position, I mean his position as a raiyat. Now what will happen if the proviso be deleted? The landlord himself will be a raiyat by law and it will be impossible for him to recognise the ex-tenant as anything other than an under-raiyat. As an under-raiyat he will have no right under the present law, and under the proposed law he remains much the same though with some limited right which again is much difficult to attain. I know he will not get them till he has been lucky enough to possess the same holding, and that again with a homestead on it, for 20 years. The position which will arise in this way and the great incentive which it will give to surreptitious rent sales are matters which must be seriously considered. One hon'ble member has suggested (I think several have suggested) that there might be benami purchasers but they have not thought of the much worse possibility of surreptitious sales and of far more frequent rent suits than now.

The general principle underlying the rule of merger is that if a landlord is permitted to hold as a raiyati under himself the cultivator would never be better than a mere under-raiyat, without any rights whatsoever under the present law and with very limited rights under the proposed law as I have already explained.

The proviso which it is proposed to be deleted has, as has already been explained by Mr. Sachse, been taken from the Select Committee's own Bill, section 158 (*b*), and it was a set-off against what Government accepted in sub-section (*2*) of the present section. However, the position is this: that if the landlord becomes a raiyat the cultivator can only be an under-raiyat. Sir, we have practically killed the bargadars and I implore the House to consider very carefully before accepting a proposal which will go such a very great way to shut out the cultivators from the status of raiyat. They would be either bargadars or under-raiyats. With these words I beg to oppose the amendments.

Srijut NAGENDRA NATH SEN: I beg to support the amendment which has been moved by Rai Satyendra Nath Roy Choudhuri Bahadur. In doing so I would submit before you that there should not be anomaly between a co-sharer landlord who purchases at a rent sale and a private purchaser. My friend, Babu Jitendralal Bannerjee, has told us that the object of Government in putting this proviso to clause (2) of section 22 is to recognise a wholesome principle of law that there should not be united in the same person two different offices, i.e., of landlord and tenant. My friend, Rai Harendranath Chaudhuri, has said that there has been a contest between the executive Government and the judiciary over the adoption of the doctrine of merger. I submit before the House that there has not been any legislative

sanction as to definition of merger, and the judiciary has always negatived the idea of the application of the English Law of merger to mufassal land tenures. My friend, Mr. J. C. Gupta, has pointed out that the legislation which has been enacted under section 22 went so far as to preclude the idea of union of all interest in the same person. The safeguards which are going to be provided in the present amending Act and against which my friend, Babu Jitendralal Bannerjee, and many other members who pose themselves to be friends of raiyats have spoken seem to me to be desirable.

5 p.m.

Sir, the question is not whether the legislature have ever negatived the idea of uniting two sorts of status in the same person, but the broad question is that we are legislating, and it is for us to see whether the perpetuation of the thing which is intended by the insertion of the proviso is necessary. My friend, Babu Jitendralal Bannerjee, has missed the point and he has entirely lost sight of the fact which he himself propounded the other day, viz., that we are not legislating in vacuum and that we are legislating on the basis of the existing state of rights of the different communities—of tenants and landlords. The question of merger is one which has been engrafted in the law of India from the English Law. There was no such law of merger before, and the legislature while enacting the Bengal Tennacy Act never forgot the question of retention by tenure-holders of plots of land, including their own tenures, and their cultivation by hired labourers, servants, and bargadars, etc. So, in this part of the country a tenure-holder unites in himself both the functions of a tenure-holder and a raiyat, and the legislature has never forbidden this thing. So, it has to be seen whether the introduction of sub-section (2) of proposed section 22 takes away the existing rights of the raiyat, or gives to the landlord a right which is antagonistic to the rights of the raiyat or would take away the vested rights of any other person. As the law has been since the Bengal Tenancy Act of 1885, and even after the amendment of 1907, so far as the acquisition of a tenant's interests by a tenure-holder or a proprietor is concerned, the law has been allowed to remain in an unsatisfactory and uncertain state. The old law says that "when the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, such person shall have no right to hold the land as a tenant, but shall hold it as a proprietor or permanent tenure-holder (as the case may be)." What is the right of the subordinate tenant who happens to hold the land under the raiyat when his interest is acquired by the tenure-holder or the proprietor? The law of 1885 and the amending Act of

1907 are absolutely uncertain and vague on these points. The addition of sub-section (2) to section 22 in the present amending Act seeks to modify that anomaly, and seeks to make the law clear, definite, and positive. So far as the Bengal Tenancy Act, as amended by subsequent Acts, is concerned, the position of a tenant is uncertain, and therefore we welcome this sub-section (2), for it gives to the tenant certain means to know what his position would be. Then it may be said with almost certainty that we are going to give the raiyat an absolute right of transfer. For some reason or other, Sir, the raiyat's interests are put up for sale, and if there is no objection to other persons coming in and bidding for that property and acquiring the interests of the raiyat, it seems absolutely inexplicable why a co-sharer landlord, because he happens to be such, should not have the option of purchasing it, and that even if he purchased it, he should be divested of the occupancy right. It has not been shown by Babu Jitendralal Bannerjee or any other speaker from the other side what deviation or subtraction from the rights of raiyats will be effected by the introduction of this proviso. If it were shown to our satisfaction that by the deletion of sub-section (2) some harm would be caused to the raiyats, we will of course join our hands with my friends who have opposed this amendment. But as it stands, nothing has been shown to prove that any harm would result from its deletion. The question is one of a co-sharer landlord purchasing a holding at an auction sale: it does not say anything about what would happen if a stranger were to purchase it at a rent sale or a money sale, or if a co-sharer landlord purchases not at a rent sale but at a money sale.

My friend, Mr. Sarat C. Basu, has said that what is sauce for the gander is not sauce for the goose. I submit that since the dele[illegible]rty would not injure any person, it is eminently fair that we of the occu- notice of facts which have been existing for more th[illegible]n the distinction which have the backing of a consensus of ju[illegible]purchase by one of the favour, though I quite admit that we a[illegible]ord's interest is vested. In trammelled by judicial decisions howev acquires the original rights of it can be shown that the rulings and ju[illegible]but a co-sharer landlord who in ties will do any harm, there is no rea[illegible]has in himself all the rights of those judicial opinions as sound and ba[illegible]on.

The Hon'ble Sir PROVASH CHU[illegible] which I would like to remind first of all to take up the amendment [illegible]ndment of Rai Satyendra Nath Roy Choudhuri Bahadur and I oppos[illegible]han Bahadur Maulvi Ekramul dhuri with his usual industry has pla[illegible]matic restoration of previous law on the subject. He has told the [illegible]th this point but none of the early days of the Weekly Reports til[illegible]t, perhaps they found that it the High Court has always held that t[illegible]not be answered. If the Khan has not been applied to mufassal lan[illegible]n the section would be left [illegible]t there is the clause 2 of the

question that. That law is well settled. But what I do desire to submit to this House is: "Is that relevant?" Is it a question of merger? Is not the question this: "Can a man acquire a right against himself?" An occupancy right has got to be acquired against somebody, and that somebody is the landlord. It is equally well known that a man cannot acquire a right against himself. It is for that reason that I submit that this is not a question of merger. The question is whether a landlord can acquire a right of occupancy against himself. Furthermore, the question of merger can only have an application where the sole interest of the landlord and the sole interest of the tenant are united in one person. In both the amendments, Sir, we are discussing the question of the co-sharer landlord acquiring the sole interest of the tenant. The word "merger" in its legal meaning, in its grammatical meaning, cannot by any means have any application to the question we are discussing now.

Now, Sir, as regards the question as to whether a landlord can acquire a right of occupancy against himself, the law has all along been embodied since 1885 in clause (*1*) of section 22, and there has been for practical purposes no change on that point. In the cases only of sixteen-anna landlords acquiring the interests of sixteen-anna tenants there can be a question of merger. In the Act of 1885, as also in the proposed amendment, there has been no change, and no member of this House has moved any amendment on that question. That I trust disposes of the lengthy discussions on the question of merger.

Now, Sir, the amendment which Rai Satyendra Nath Roy Choudhuri Bahadur has moved is to the effect that the proviso to sub-section (*2*) should be deleted, and the amendment of Khan Bahadur Huq is to the effect that sub-section (*2*) itself should be has been a good deal of discussion on these amend- members have pointed out that as sub-section (*2*) rds, and as the proviso also deals with them, ubmit that in justice to all this difference b-section (*2*) where a co-sharer landlord vate transaction, there is a transfer of ght of the occupancy raiyat himself. ne amongst eight landlords; so he can rainst the whole body of landlords, i.e., So, in this case the occupancy right proviso we are dealing with a different so we are dealing with the case where other co-sharers parties to a rent suit, the original occupancy right itself free is not a case of transfer of existing Because, in that case the rights created be extinguished by the sale in execution

in himself. legislature has whether the introdu takes away the existing ri a right which is antagonistic away the vested rights of an since the Bengal Tenancy Act of 1907, so far as the acquisit holder or a proprietor is concer in an unsatisfactory and unc "when the immediate landlord or permanent tenure-holder, a and the raiyat in the holding transfer, succession or otherwi hold the land as a t proprietor or permanent te What is the right of the sub land under the raiyat when holder or the proprietor? Th

of a rent decree binding on the sixteen-anna landlord. The effect of a sixteen-anna rent sale is that the encumbrances created on the tenancy after the sale ceases to exist, subject to certain limitations. (A voice: What if a third party purchased it?) If a third party purchases, I shall first of all take the general case—he purchases it free from encumbrances and with certain rights for avoiding encumbrances. If a third party purchases the right of an occupancy raiyat, he steps into the shoes of the occupancy raiyat, and he has all the advantages of a rent sale. There is this difference. If it is a private purchase by the landlord under sub-section (2), then he can purchase it subject to any mortgage there might be: there is only a transference of the existing rights. Whereas in a rent sale it is not a transference of existing rights, but a transference of all rights that the occupancy raiyat himself had free from all encumbrances but subject to any protected interest. So, the two cases are different. I submit that the two cases being different, when a co-sharer landlord goes through the procedure of getting a sixteen-anna rent decree against all the landlords, the position is different. But, apart from this, what will be the position? In a rent sale in which all the sixteen-anna landlords have joined, the purchaser knows very well that the sale is the result of a rent decree. Now, if one of the co-sharer landlords purchases in that rent sale as the result of a rent decree, what becomes of the rights created by the old occupancy raiyat? Those rights cease to exist.

5-15 p.m.

Whereas if a third party purchases, that third party acquires interest in all the land at the instance of all the co-sharer landlords, but this particular co-sharer who purchases and has made his co-sharers a party purchases in an involuntary rent-sale all the original rights of the occupancy raiyat free from incumbrances, and that brings in the distinction between the purchase by the third party and purchase by one of the plaintiffs or defendants in whom the landlord's interest is vested. In the case of purchase by a third party he acquires the original rights of the occupancy raiyat against the landlord but a co-sharer landlord who in such a case represents all the landlords has in himself all the rights of the landlord and tenant in the same person.

Now Sir, there is another point about which I would like to remind the House, and it is that neither the amendment of Rai Satyendra Nath Roy Choudhuri Bahadur nor that of Khan Bahadur Maulvi Ekramul Huq, if accepted, will mean the automatic restoration of previous section 22. Mr. Sachse has dealt with this point but none of the subsequent speakers have touched it, perhaps they found that it was an inconvenient point and could not be answered. If the Khan Bahadur's amendment be accepted then the section would be left without clause 2, but under the old Act there is the clause 2 of the

original section which formed part of that section. If that amendment be accepted difficulties will arise. On the other hand, Rai Harendranath Chaudhuri and Rai Satyendra Nath Roy Choudhuri Bahadur will no doubt recall that it was a result of a compromise to which some of the previous speakers from the Government benches have referred. Then, Sir, will it be right on their part to give effect to one part of the compromise which according to their way of thinking is favourable to them and not to give effect to the other part of the compromise which according to their way of thinking is not quite favourable to them? Therefore, Sir, as it is a compromise they should accept the whole of it. With these words Sir, I oppose all the amendments.

The motion that in clause 20 the proposed sub-section (2) of section 22 shall be omitted, was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Nausher.
Ali, Mr. Altaf.
Atiqullah, Mr. Syed Md.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Maulvi Nurul Huq.
Maqua, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Khan Bahadur Maulvi Syed Maqbul.
Ismail, Khan Bahadur Maulvi Muhammad.
Karim, Maulvi Abdul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Nazimuddin, Mr. Khwaja.
Rahim, Sir Abd-ur-
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Mr. Abdool Razak Hajee Abdool.
Sulaiman, Maulvi Muhammad.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Promotha Nath.
Bannerjee, Babu Jitendralal.
Basu, Babu Basi Behar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakravartty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Promendra Narayan.
Chaudhuri, Rai Harendranath.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khurshed Alam.
Cohen, Mr. B. J.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dowding, Mr. T. W.
Drummond, Mr. J. G.
Dutt, Babu Saral Kumar.
Eddie, Mr. A. McD.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hematsingha, Babu Prabhu Dayal.
Hopkyns, Mr. W. S.
Hussain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Kasem, Maulvi Abul.
Lala, Babu Sarada Kripa.

Magrath, Mr. L. T.
Maiti, Babu Mahendra Nath.
Maiti, the Hon'ble Mr. A.
Martin, Mr. G. S.
McGlashan, Mr. E. T.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Munim, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Nem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Parrett, Mr. P.
Peddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. B. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarkar, Babu Nalniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 29 and the Noes 85 the motion was lost.

The motion that in clause 20 the proviso to the proposed section 22 (2) shall be omitted, was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Promotha Nath.
Basu, Babu Saci Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Bose, Babu Bejoy Krishna.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakrabortty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Nafizar Rahman.
Chaudhuri, Rai Narendranath.
Das Gupta, Dr. J. M.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Goenka, Rai Bahadur Badridas.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Himatsingha, Babu Prabhu Dayal.
Lala, Babu Sarada Kripa.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Nasker, Babu Nem Chandra.
Pal Choudhuri, Mr. Ranjit.
Peddar, Mr. Ananda Mohan.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray Chaudhuri, Mr. K. C.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sanyal, Babu Sachindra Narayan.
Sarkar, Babu Nalniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Abbott, Mr. E. G.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Banerjea, Babu Jitendralal.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Dowding, Mr. T. W.
Drummond, Mr. J. G.
Eddis, Mr. A. McD.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.

Ghose, Mr. M. C.
Gordon, Mr. A. D.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hopkyns, Mr. W. S.
Hussain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Khan Bahadur Maulvi Syed Maqbul.
Hussain, Maulvi Latafat.
Ismail, Khan Bahadur Maulvi Muhammad.
James, Mr. F. E.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maguire, Mr. L. T.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
McCluskie, Mr. E. T.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Momin, Khan Bahadur Muhammad Abdul.
Nazimuddin, Mr. Khwaja.
Nelson, Mr. W. H.
Parrett, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Rahim, Sir Abd-ur-
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Sarkar, Rai Sahib Rebati Mohan.
Sattar, Mr. Abdeel Razak Hajee Abdeef.
Sofaiman, Maulvi Muhammad.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 48 and the Noes 63 the motion was lost.

5-30 p.m.

The following amendments were called but not moved:—

Babu MAHENDRA NATH MAITI to move that in clause 20, in the proviso to clause (2), after the words "and shall pay," the words "their share of the rent paid by the former tenant or" shall be inserted.

Rai HARENDRANATH CHAUDHURI to move that in clause 20, in the proviso to sub-section (2) of proposed section 22, after the words "his co-sharers" and before the words "a fair," the following words be inserted—"the rent payable to them by the raiyat judgment-debtor whose holding has been purchased or."

Babu MANMATHA NATH ROY: Sir, as the Government proposes to accept this amendment in a slightly different form, and as that does not mean any alteration in the substance of my amendment but only in the wording of it, may I have the permission of the House to alter the amendment in the form suggested by the Government?

The motion that Babu Manmatha Nath Roy be permitted to alter the wording of his amendment was then put and agreed to.

Babu MANMATHA NATH ROY: I move that in clause 20, in proposed section 22 (2), proviso, lines 9 to 12, for the words "In determining from time to time what is a fair and equitable sum, regard shall be had to the rent payable by the occupancy raiyat at the time of the transfer, and to" the following shall be substituted namely, "The rent

payable by the raiyat to the other co-sharer landlords at the time of transfar shall be regarded as the fair and equitable sum until otherwise determined in accordance with."

The Hon'ble Sir PROVASH CHUNDER MITTER: We are prepared to accept the altered amendment.

Babu MANMATHA NATH ROY: I shall be very brief in explaining the object of the amendment.....

Mr. PRESIDENT: Please move it formally.

Babu MANMATHA NATH ROY: I move the amendment and I say only this that the object of the amendment is to remove the uncertainty and the difficulties that may arise on the question of the amount of rent payable by the co-sharer landlord after his purchase.

Mr. B. E. J. BURGE: We accept the amendment.

The motion of Babu Manmatha Nath Roy was then put and agreed to.

The following amendments were called but not moved:—

Babu MAHENDRA NATH MAITI to move that in clause 20, in the proviso to clause 2, the words "the rent paid by the former tenant shall be presumed to be fair and equitable until the contrary is proved" shall be added.

Rai HARENDRANATH CHAUDHURI to move that in clause 20, after the proviso to sub-section (2) of the proposed section 22, the following further proviso be added:—

"Provided also, notwithstanding anything contained in Chapter II, nothing in this section shall entitle an under-raiyat to occupy the position of an occupancy right."

Khan Bahadur Maulvi EKRAMUL HUQ: I move that in clause 20, after proposed proviso to section 22 (2), the following proviso shall be added, namely:—

"Provided that when the proprietor or permanent tenure-holder lets out such a holding in bhag to a tenant or a permanent resident of the village, the bhagidar shall acquire the rights of a tenant and shall pay by way of yearly rent for the holding the rent annually paid by the tenant whose place he takes."

As we found, Sir, when the previous amendments were discussed in this House, land-hunger or earth-hunger has overtaken the proprietors in the country. We have found, Sir, that the zamindars and tenure-holders, all want that they should have occupancy rights and make all occupancy holdings their own. They want to have all lands for themselves and they want to utilise the tenants as mere labourers or servants. This being the case, it is necessary that there should be some clause in the Tenancy Act which shall make it possible.

Khan Bahadur MUHAMMAD ABDUL MUMIN: On a point of order, Sir. Is the member now entitled to discuss whether a bhagidar or chasidar is or is not a tenant? That question has already been decided by this House.

Khan Bahadur Maulvi EKRAMUL HUQ: I was not saying anything of that sort.....

Mr. PRESIDENT: Mr. Huq, unless you can show that what you are saying is relevant to the subject under discussion and that your arguments have not already been decided, it is useless treading over the same ground again.

Khan Bahadur Maulvi EKRAMUL HUQ: The hon'ble member seems to be very restive. I did not at all refer to bhagidars or chasidars. What I was referring to is this: that persons who happen to possess lands after those lands have been transferred to the proprietors, should have acquired rights in those lands; I want to protect these persons, and I was not talking of bhagidars or chasidars. You will find from my amendment and it is quite clear that what I want is that in cases where lands are being held by landlords of proprietors of the soil, when they get possession of such lands whether as part proprietors or as full proprietors, there should be a clause in the Act which should enable persons who are holding such lands not to hold them as landless labourers but as tenants. That is a zamindar should by law be excluded from becoming a chasa. That is what this amendment aims at and that has, I understand, been the desire of the Government. I, therefore, hope that Government will seriously consider whether they should or should not allow the landlords and the proprietors of the soil to remain fixed in their own gadis as rajas, as they have been, and not become so many projas and tillers of the soil. If Government remains indifferent to the interests of the cultivators, not only this land-hunger will take possession of the landlords but it will also seize the capitalists of the country with the result that lands will gradually pass away from the hands of the actual producers of the wealth of the country and will vest in persons who have absolutely nothing to do with it. With these words, I submit my amendment for the consideration of the House.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I oppose this amendment.

Mr. M. ASHRAF ALI KHAN CHAUDHURI: In supporting this amendment, I beg to draw the attention of the House to the fact that it is generally the case that small zamindars—I am not talking of the big zamindars—and the officers and persons under their employ are the people who really tyrannise the actual tillers of the soil. (A voice: Hear, hear; this is from a zamindar himself.) What happens is this: when a small zamindar, whose income is very very small, is in occupation of some land, he wants to raise his income as much as he can. And so he will not in any case and after the amendment of this Act he will never in future give his land in tenancy to any raiyat. What he will do is this: that he will give the land to a person in bhag so that his income instead of being Rs. 2 per bigha will become Rs. 20 per bigha.

5-45 p.m.

What will he do then? He will give it to a person in bhag, so that his income may be Rs. 20 instead of Rs. 2. The big zamindars have no concern with this affair: they are too big. It is only the little pin-pricks that have gone to the heart of the people and it is only for that reason that there has been so much agitation in this country and this Tenancy Act is now being amended. If the actual tillers of the soil be not allowed to have the tenant's right, then they will have no concern with the land and they will remain hewers of wood and drawers of water for ever.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I oppose this amendment in consequence of the fact that by this amendment various inconsistencies will be brought into this section. First of all, the mover will be pleased to see that the wording in his amendment is defective. The amendment says: "when the proprietor or permanent tenure-holder lets such a holding in bhag to a tenant or a permanent resident of the village," it does not provide for cases in which the whole holding or any portion of it is not let out either to a tenant or to a person resident in the village but to somebody who resides in a contiguous village. Therefore the position will become absolutely anomalous and difficulties will often arise for the purpose of ascertaining what the status of this particular person becomes. My second ground of objection is that it goes against the definition of tenant which the Council has already accepted regarding the question as to when a bhagidar will become a tenant, and when not. It will go against this definition and therefore I think that if we introduce an amendment of this character it will make the position worse.

Babu JITENDRALAL BANNERJEE: Sir, I feel that I must oppose this amendment. It is regrettable that Khan Bahadur Maulvi Ekramul Huq seems unable to proceed upon any clear or consistent ground of principle. This House has agreed that bhagidars are not to be treated as tenants: this House has also agreed that a co-sharer landlord can acquire the right of an occupancy raiyat under certain circumstances. Having regard to these facts, it seems rather curious that the Khan Bahadur should try by all sorts of devious and indirect means to neutralise the effect of those accepted provisions. On this ground, I oppose the amendment.

Babu AMARENDRANATH GHOSE spoke in Bengali; the English translation of which is as follows:—

"Mr. President, purport of the amendment seems to be that a bhagidar is to be considered a tenant when he holds land under a landlord but when he holds land under a tenant his status will not be improved.

Khan Bahadur, when he spoke of landlords, only of big ones, such as Raja Shashi Kanta Acharjya Chaudhuri, Rai Harendranath Choudhuri and others. It did not occur in his mind that there were hundreds and thousands of middle class poor men who are proprietors of small estates yielding hundred or two hundred rupees yearly who are also landlords according to this Act. These men have a right to live, we cannot kill them, we must save their interest. They have petty income and hold a few bighas of lands which they cultivate by bargadars and thereby maintain their family. If this amendment is accepted by this House then they will be ruined.

If bhagidars are to be given rights to the soil at all why not the rights of an under-tenant will be given to them. No amendment has been moved to that effect. This shows the mentality of the House; none likes that a bargadar will be a tenant. It is clear that this amendment has been moved to injure the landlords.

It is good to be a friend of a cultivator. I am also a friend of him, but for the present his interest is dependent on the interest of the landlord.

So if we must do good to a cultivator we must look to the good of the landlord as well.

It would really be a bad day for the country when between the Government and the cultivators—no intermediate class such as the landlords, tenure-holders, etc., would not exist.

If this amendment is carried baghidars will also be ruined with poor landlords because the landlords would no longer give land to bhagidars

but to get the lands cultivated by the servants and menials and the bhagidars will consequently turn into day-labourers, a position which the mover of the amendment did not contemplate for them."

Khan Bahadur Maulvi EKRAMUL HUQ: May I rise on a point of personal explanation with reference to the remarks of Mr. Jitendralal Bannerjee? I wanted to give the tenant a right only in cases where proprietary land is given to the tenant.

The motion of Khan Bahadur Maulvi Ekramul Huq was then put and lost.

The following motions were called but not moved:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, to move that in clause 20, in the proposed section 22 (3) and in the explanation thereunder, for the words "temporary tenure-holder" and "temporary tenure," the words "ijaradar" and "ijara," respectively, shall be substituted.

Babu AMARENDRA NATH GHOSE to move that in clause 21, before the words "but shall," the words "or render it unfit for the purpose of tenancy" shall be inserted.

Mr. PRESIDENT: There are so many amendments to clauses 22 and 23, dealing respectively with sections 23A and 26 which require sanction that I think it is absolutely useless to discuss the few amendments on these clauses which are now open to discussion, because we shall not be able to discuss the substance of the clauses nor deal with the important amendments with regard to those clauses. So what I propose to do is to pass over these amendments, and skip to item No. 764. There seems to be hope of more fruitful discussion of the amendments succeeding that item.

Rai HARENDRANATH CHAUDHURI: May I rise on a point of order? Sir, we have not yet had time to go into the matter you propose to take up. May I suggest that the House do adjourn till Monday next?

Mr. PRESIDENT: I have no objection if the Hon'ble Member in charge does not object. It will not be fair in my opinion, to ask the members to take up item No. 764 at once.

The Hon'ble Sir PROVASH CHUNDER MITTER: I can well understand the difficulty of the members, and I may frankly say that we also suffer from that difficulty. At the same time we have this heavy list of amendments to go through and every minute that we can use

the better it is for the members and ourselves. I am sure there are members who will be able to carry on the debate. For that reason, though with some reluctance, I oppose the suggestion.

Mr. PRESIDENT: I shall only be too pleased to be guided by the decision of the House. But I might point out that if we do not adjourn now, we will have only half an hour more: It will not, I suppose, matter much if the House is adjourned now and the matter is taken up on Monday.

The Hon'ble Sir PROVASH CHUNDER MITTER: In view of the fact that we have only half an hour left, I do not think that I ought to persist in my objection; but I would ask you, Sir, and my friends, to consider whether later on, if it be necessary, we should not extend the time of our sitting to a later hour, because it is the common interest of all to finish the business as quickly as possible.

Mr. PRESIDENT: We shall decide that point later on.

Adjournment.

The Council was then adjourned till Saturday, the 18th August, 1928, at 10·30 a.m., at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Saturday, the 18th August, 1928, at 10-30 a.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, and 92 nominated and elected members.

Resolutions

(on matters of general public interest).

The following resolution was called but not moved and therefore deemed to be withdrawn:—

Maulvi SHAMSUR-RAHMAN: "This Council recommends to the Government that a mixed committee of officials and non-officials be appointed to enquire into the working of the Government of Bengal Press (Alipore), the Forms and Jail Press and the different settlement presses under the Government of Bengal with special reference to—

(i) the amount and nature of work done;

(ii) the working conditions prevailing in these presses;

(iii) leave, holidays, pay and pension granted to the workers; and

(iv) how far the printing machinery introduced in the presses during the last fifteen years has affected the workers in regard to the number employed and their earnings."

EXTENSION OF THE SCOPE OF SELECTION GRADE OF THE LOWER DIVISION APPOINTMENTS IN THE SECRETARIAT.

Maulvi SYED MUHAMMAD AFZAL: May I move the next resolution on behalf of Mr. A. F. Rahman?

Mr. PRESIDENT: Yes.

Maulvi SYED MUHAMMAD AFZAL: I beg to move that this Council recommends to the Government that in the departments of the Bengal Secretariat where there are less than five upper division posts, at least 30 per cent. of the lower division assistants be permitted

to draw the selection grade pay of the lower division, and that in the departments where there are no upper division posts, selection grade posts be thrown open to at least 60 per cent. of the lower division assistants.

In moving the resolution which stands in the name of Mr. A. F. Rahman, I beg to state that the selection grade posts of the lower division of the Bengal Secretariat owe their origin to the recommendation of the McAlpin Committee of 1921. Previously there was a system in vogue for personal allowances being granted to deserving and meritorious assistants and the rate of allowances was Rs. 25 a year for two years, as is the rate of the lower division selection grade posts.

The present selection grade posts are however limited to ten per cent. of the strength of the lower division posts of a department. The inevitable result is that a department having clerks more than ten but less than 20 gets the benefit of only one such post. If in a department there be two deserving assistants of special merit of the same standard and whose claims mature at the same time, the most illogical and palpably inequitable corollary is that one has naturally to suffer and the worst of it is that such is invariably the case when he has reached the maximum of the scale and is about to retire. Previous to the recommendations of the McAlpin Committee a clerk of special merit had the chance of a personal allowance and for as many of the assistants in a department as might have a reasonable claim for this. But the water-tight compartments of the Secretariat now deprive some lower division assistants of the benefit. The recommendation of the McAlpin Committee to the effect, as is now in operation in the Secretariat, is nothing short of artificial, arbitrary and whimsical arrangement and reveals a spirit of short-sightedness on the part of the authors of the arrangement in question. The present artificial system restricted to a very low and negligible percentage is calculated to prejudice the cause of an assisstant even when there is a bona fide necessity, and the purpose of this resolution is to uphold a fair chance for such cases and a reasonable distribution of these posts amongst the really deserving.

The examination of facts and figures demonstrates the inequitable position further. If the whole Secretariat would be regarded as one establishment then there would be at least 23 or 24 posts on the selection grade of the lower division consisting of 235 such assistants. Again, if there would be an arrangement that any assistant of special merit might get it on the recommendation of the Secretary of his department to the Finance Department as the controlling body of the lower division establishment, this would have afforded the Finance Department a chance of scrutinising into the real merits of a case and would have thus obviated an unpleasant situation, specially in

cases where there would be any favouritism on the part of officers—who are after all human beings—when there would be two rival claimants of the same merit. But instead of 23 or 24 selection grade posts there are only 19 such posts allotted, department by department, on the artificial ten per cent. basis as may be gathered from the McAlpin Committee Report of 1920-21. So practically lower division assistants lose these 4 or 5 posts and the present arrangement is a subject of criticism.

Further, an examination of prospects of the lower division assistants reveals that in most of the offices of the Bengal Secretariat, as can be gathered from the McAlpin Committee's Report of 1921, that there are *at least* ten upper division posts. Only in departments like the Education, the Agriculture and Industries and the Legislative, there are 6 or less than 6 upper division assistants save the Legislative and the Private Secretary to the Governor where there are no upper division posts of the Secretariat cadre. I understand that there are about 100 upper division posts in the Secretariat. I fail to understand how and why the Legislative Department have been singled out for this exceptionally inequitable treatment. In England the Parliamentary staff are better paid than the Secretariat—it is of course here an irony of fate that the scope of prospects has been so poor in the Legislative Department. However, in each department of the Secretariat where upper division posts are six or less than five and where there are no upper division posts of the Secretariat cadre, the chances of the lower division assistants to the upper posts are very few and far between or almost nil, as for instance in the Legislative Department, although the lower division assistants of the department and the like offices are recruited from the same competitive clerical examination of the Bengal Secretariat and draw the same grade of pay as in the other departments of the Secretariat.

Again, I notice that in the departments where there are a small number of upper division posts, not to speak of the department where such posts are nil, the proportion of lower division to upper division compares very unfavourably. The result is that most of the lower division assistants in such departments have to do the work of upper division assistants. I notice that in most of the bigger departments the proportion of upper division to the lower is generally 2 : 1, whereas in the smaller departments, as already explained, the proportion is sometimes 2 : 14 or 12, that is to say, 1 : 6 or 7, as the case may be. In the Private Secretary's office it is 1 : 1. In the departments other than those the upper division assistants have the chance also of rising to Assistant Secretaryship, etc., save and except the Legislative Department where there is no such chance. In consideration of these circumstances the irresistible conclusion is that the restriction of percentages of the selection grade posts in such smaller departments

should be relaxed, so that such departments may be authorised to send special recommendation where there is a legitimate case of outstanding merit.

The last point in support of this resolution is the financial consideration of this question, which is very favourable. Out of 20 selection grade posts only 4 or 5 assistants in the lower division actually enjoy them. So practically the prospect of the selection grade posts is not availed of by the majority of the lower division assistants, particularly for the reason that a candidate has to complete three years on the maximum of the grade, and when he fortunately enough claims the selection grade, he is generally on the verge of retirement. In these circumstances the scope of selection grade posts should be widened as far as practicable and must be thrown open to all the assistants in the lower division who are fit for the same and in order to do justice to right claims. It is incumbent upon Government that they should give this question very serious consideration and all possible recognition it deserves, since it is all the more cogent reason and it involves no extra expenditure—the margin of unenjoyed posts being wide. Besides, clerks are now recruited by means of an open competitive examination. The Hon'ble Mr. Marr told us the other day that for 15 or 20 posts about four or five hundred candidates appeared at the competitive clerical examination for the last two years. This shows that the candidates recruited are of high calibre, but the fate of these recruits ultimately depend on the nature of the respective departments where they are in the first instance appointed. To make my meaning more clear, I should submit that in a department, where there are a number of upper division posts, the recruits generally stand a much better chance of being promoted, whereas in a department where the number of such posts are very limited or where there is no such post at all, the unfortunate recruits in such a department have absolutely no chance at all, and all their hopes and aspirations therefore, as a matter of course, wither on the maximum of the lower divisions, viz., Rs. 150. The result of such system eventually means the deterioration of the calibre and ability of these clerks which, in other words, means loss to Government in the matter of the efficient management of their work so far as these clerks are concerned. Therefore these clerks are the worst sufferers for no fault of their own.

Babu JITENDRALAL BANNERJEE: I would like to support the resolution just moved. In order to make my position perfectly clear I should like to explain the working of the system of Secretariat clerks. The clerks or assistants employed in the Secretariat are divided among two separate classes—the upper division and the lower division. In the lower division there are 235 clerks and their salaries range from Rs. 60 to Rs. 150. On the other hand the upper division

consists of something like 100 assistants and their salaries range from Rs. 125 to Rs. 500. There might have been a time when the lower division clerks were men of an inferior status and calibre to the upper division men, but at present there is practically no difference on such points. Sometimes the lower division clerks are called upon to do the very same duties which are allotted to the upper division clerks. In education, equipment, and social status, there is hardly any difference between the clerks in the two divisions. In these circumstances the lower division assistants have certain grievances of which they can legitimately complain. In order to remove those complaints, it is now provided that one-third of the upper division clerks should be recruited from the lower division. In the February session of this Council I had occasion to urge that the whole of the upper division should be recruited from the lower division. In opposing my demand, the Hon'ble Member pointed out that the lower division clerks had another means of promotion, viz., that some of them might be employed in the selection grade. But you will see how the system works out in practice. I have already told you that there are 235 clerks in the lower division, and the arrangement is that only 10 per cent. of them can be employed in the selection grade. This would give us 23 or 24 in the selection grade at any one time. But according to the beautiful way in which the Secretariat is divided among water-tight compartments, only 19 are actually entitled to be employed in the selection grade—and in point of fact even these 19 do not get the benefit of the arrangement. One of the conditions is that only those who have been in the Rs. 150 grade for three years, should be entitled to be placed in the selection grade. The result is that, instead of 19 getting the benefit of the selection grade not more than 3 or 4 at a time are employed in that grade. Thus it happens that out of a sanctioned cadre of 19, only 3 or 4 posts are occupied while the remainder all unoccupied and the lower division clerks do not get the benefit of the same. The only way in which a remedy can be provided is to increase the percentage from 10 to 30 in those departments where the sanctioned upper division posts are six or more and from 10 to 60 in those departments where the number of upper division posts are less than six. It is a great anomaly that posts should be sanctioned and not occupied. I urge Government to take steps that this anomaly may be removed and thus to remedy a legitimate grievance of the clerks.

MEMBER in charge of DEPARTMENT of FINANCE (the Hon'ble Mr. A. MARR): I must oppose this resolution, but before going into the merits of the resolution I would like to reply to a remark Mr. Jitendralal Bannerjee has made. His remark is rather off the point as regards the resolution itself. In the course of his speech he said that only 3 or 4 men in the whole Secretariat were in the

selection grade. I cannot tell you how many there are in the selection grade in the whole Secretariat, but I know from my own knowledge of the Finance Department that in that department alone there are 3 men of the lower division in the selection grade. Mr. Afzal, it appears, is under some misapprehension in moving this resolution. In the resolution, when he speaks of "departments", I assume that he means the departments into which the Secretariat is divided, that is to say, the Finance Department, the Revenue Department, the Local Self-Government Department and others. In the latter part of the resolution he says "in the departments where there are no upper division posts, etc." Such departments do not exist. In every department of the Secretariat there are upper division posts.

Babu JITENDRALAL BANNERJEE: But not any in the Legislative Department of the Secretariat cadre.

The Hon'ble Mr. A. MARR: I will come to that later.

That deals with the latter part of the resolution, which thus goes out.

In the first part he says "in the departments of the Bengal Secretariat where there are less than 5 upper division posts, etc."

There is only one such department, namely, the Legislative Department, where there are two upper division posts and therefore this resolution boils down to a resolution regarding the Legislative Department. I presume that when he asks for this resolution to be passed he refers only to those clerks in the lower division who are worthy of promotion. I presume he means that. Those clerks who are worthy of promotion have two channels. In the first place, they get promotion to the selection grade and secondly, when the time comes, as Mr. Bannerjee has pointed out, they have a chance of promotion to the upper division. Now one-third of all vacancies in the upper division are filled by promotion from the lower division. With these two channels open it seems to me that the prospects of good lower division clerks are not at all bad and we have nothing before us to show that these prospects should be improved in the way in which the mover of the resolution suggests. I must therefore oppose the resolution.

The following motion was then put and agreed to:—

"This Council recommends to the Government that in the departments of the Bengal Secretariat where there are less than five upper division posts, at least 30 per cent. of the lower division assistants be permitted to draw the selection grade pay of the lower division, and

that in the departments where there are no upper division posts, selection grade posts be thrown open to at least 60 per cent. of the lower division assistants."

APPOINTMENT OF A COMMITTEE TO INQUIRE INTO THE WORKING OF CERTAIN PRESSES UNDER THE GOVERNMENT.

Mr. K. C. RAY CHAUDHURI: I beg to move that this Council recommends to the Government that a mixed committee of officials and non-officials be appointed to inquire into the working of the Government of Bengal Press (Alipore), the Forms and Jail Press and the different settlement presses under the Government of Bengal with special reference to—

(i) the amount and nature of work done;

(ii) the working conditions prevailing in these presses;

(iii) leave, holidays, pay and pension granted to the workers; and

(iv) how far the printing machinery introduced in the presses during the last fifteen years has affected the workers in regard to the number employed and their earnings.

At the outset I draw the attention of the hon'ble members of the House to the excellent speech delivered yesterday by Sir B. L. Mitter at the Y. M. C. A. on trade unions in India in which he expressed clearly that the employers should always welcome healthy trade unions as that will bring about a better understanding between labour and capital. I would have no necessity to come before this Council with this resolution if Government paid any heed to the suggestions that I have made to the Hon'ble Mr. Marr and to other officers regarding the recognition of the Press Employees Union, which is the only organisation affecting the employees of the Government and other presses. The great misfortune that these trade unions are suffering from is indifference of the employers, be they Europeans or Indians. They have great suspicions that these labour organisations are nothing but strike committees and that they have been founded with the object of bringing estrangement between labour and capital and of keeping labour discontented for personal grounds of the leaders. I thoroughly repudiate that suggestion and that kind of hallucination which most of the agents of employers suffer from in Bengal, in the whole of India, and particularly in this press that I am referring to. Coming to the resolution proper, which affects all the employees in all the presses under the control of the Government of Bengal. Naturally I feel I shall have to traverse a long distance to do justice to the matter. But I shall try to cut short and content myself with only briefly referring to the more salient facts that are indispensable to a proper understanding of the case. My object which is quite palpable from the wording of the resolution itself is to bring

to light a live picture of the nature of life the employees of the respective presses lead under Government employ. I believe I have the House with me when I say that the public is not much aware of it and the very little they are aware of is not regarded by them as very satisfactory.

Sir, the necessity for a resolution of this nature has arisen at the present moment for more than one reason. Indeed matters have cropped up--matters vital and pressing—which require immediate attention.

As regards the Bengal Government Press (Alipore), I may mention that an Enquiry Committee was appointed in December 1925, with Mr. McAlpin as Chairman, and myself, Mr. W. L. Travers and Mr. T. B. Roy as members of that committee and that committee went into the grievances of the piece-workers in the Bengal Government Press, Alipore. The unanimous recommendations of that committee have not been given effect to in full. Repeated and persistent questions on the subject in the Council have not been able to evoke from my hon'ble friend over there more than the brief reply, viz., "they are under consideration." I would like the Hon'ble Member in charge to say something on that point.

Again, this Council passed a resolution in February last recommending to the Government that the Linotype operators, who are now working under the piece-system, be placed on a salaried basis. But no action has yet been taken in the matter. The budget of 1928-29 has sanctioned a sum of Rs. 25,000 as lump provision for giving effect to the recommendations of the piece-workers committee, 1926. But no one knows how this money has been spent. And naturally there is a great misapprehension among the employees concerned. It would not be out of place to mention here also that at the present moment there is considerable dissatisfaction and murmuring in the Bengal Government Press at Alipore over the fact that the memorials and petitions sent by the employees are deliberately thrown aside and, what is more lamentable, is that the conspicuous and enthusiast among them are singled out and dismissed without a word for no other fault than that the chill penury in which they constantly find themselves spurred on by official injustice and zuloom made them forget for a moment their place and they were emboldened to beg some small mercies at the hands of the Government. I give one or two instances of such unjust dismissals:—

Gafur was a compositor in the Bengal Government Press. He was suddenly dismissed on the 14th January 1928, without any notice and the one fact that could be made out against the man was that he was one of the signatories to the memorial sent in December last to the Superintendent which I am told the wise Superintendent tore away and that it had appeared to the authorities that he was a ringleader. It clumsily reveals the angle of vision of the authorities.

Then there are Abdul Karim, Abdul Gafur, Joyram Mogul and Yusuf Ali—all inkmen and machinemen. Their fault was that they could not leave out at the gate their sense of dignity and honour before entering into the magnificent building at Alipore brook simple and harmless humour of Mr. Davis one of the Deputy Superintendents in the Bengal Government Press, they got offended at his calling them by names. Surely they ought to have more sense in their heads; they were also given the sack.

Government says in reply to questions in the Council that these persons had lost their places in consequence of "reduction." This is indeed a good reply so far as it goes. But may we enquire why it is always the piece-worker who loses his service whenever any reduction is made. And I may inform the House here that new hands have been and are being recruited in their places and I am really astonished at the reply of the Hon'ble Member in charge of the Finance Department to question No. 25 (starred), dated the 2nd August 1928, put by me, the Finance Member says that new hands have not been taken. I would request the Hon'ble Member to make an enquiry anew for I am sure that he has been misinformed. I give here the names of the new recruits to facilitate the Hon'ble Member in his enquiry: They are—(*i*) Ashananda, (*ii*) Samir, (*iii*) Sevan, (*iv*) Ibrahim, (*v*) Farid, and (*vi*) Ajgar. They have been taken in February and March last. My friends will perhaps be surprised when I relate what became of the offending official and how he has been climbing up higher and higher the official ladder. I mean Mr. Davis. This gentleman, Sir, has created dissatisfaction and disaffection among the men wherever he went. When he was in the Jail and Forms Press complaints and murmurs had poured forth interminably from the workers. And we hear that during his incumbency as acting Manager of the said press some Rs. 80,000 have been defalcated. That matter is still sub-judice and I refrain from saying anything therefore of his career in the Bengal Government Press. I shall not enlarge upon it unnecessarily, but I may repeat that there is no one worker who is satisfied with him. In the face of all this, to our great wonder and utter disappointment we hear that Mr. Davis has been made permanent in the post of the Manager of the Jail and Forms Press.

I may here note in passing how the Government breaks its own rule. It is laid down that a worker should be given at least three months' notice before being dismissed. Recently a few distributors in the Bengal Government Press were dismissed on only one month's notice. On representation they were given the pay of additional two months to which they were legitimately entitled. But, Sir, these ink-men and machinemen who were on the same status as these distributors were dismissed not even on one month's notice but without

any notice at all. They have requested and prayed and put forward their cases again and again but in vain.

But I am not surprised at this in the least for to be self-contradictory has become a method and a convention with the Government, whether it be an interpretation of law or fact. Government says in answer to questions that want of regular work is the cause of abrupt reduction. I will ask my friends to take the trouble of looking at the reply of the Government in the December 1927 session of this Council to question No. 73 (vide page 162, Council Proceedings Official Report, 13th and 14th December, 1927) where the Government mildly refutes the allegation that workers in the Bengal Government Press often sit idle because of want of work. I do not really know how to reconcile that reply of the Government to the one now advanced when the intervening period between this reply and the date of dismissal of those persons is only of 12 days.

I am not in the least astonished at the denial by the Government of even the existence of any person as Abala Kanta Roy. I still emphatically say that he is there; the Government are misinformed and I take upon myself the task of proving not only that Abala exists, but that all the allegations against him are also true, if only the Hon'ble Finance Member would condescend to accompany me any day to the Bengal Government Press.

I may also here refer my friends to the answer of the Government in the last February session of this Council to question No. 12(*a*) of my friend Maulvi Latafat Hussain. The rules provide that a Government servant must have three months' notice prior to dismissal. But a revelation was made that the rule does not apply to temporary hands. To our great surprise even that ruling is now at stake. Does it not contradict with the reply of the Government given to my friend Maulvi Latafat Hussain in February last? But still stranger revelations were in store. The Workmen's Compensation Act of 1923 in Chapter II, section 3, sub-section (*1*) provides that "if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation." Clause (*a*) of the sub-section says that "the employer shall not be so liable in respect of any injury which does not result in total or partial disablement of the workman for a period exceeding ten days." But now comes the astounding reply of the Government that no matter whether the man had been confined for 17 days or 37 days "the Workmen's Compensation Act does not enjoin that compensation should be given in these two cases," which I had put forward before the Council (see Starred Question No. 24, dated the 2nd August, 1928). I would ask the Hon'ble Member to lay on the table all the medical certificates of these two cases. I understand that the Hon'ble Member really took pains to see for himself

one of the injured persons. I heartily thank him for it. But the fact is the man had been injured in December, 1927, and the interview by the Hon'ble Member was in March, 1928. With regard to the fact how machinery has affected the workers I shall say only just this. Formerly, that is some 15 years ago, there were some 300 compositors (both Hindus and Muhammadans) and now the number is only 150. The number of distributors (Hindus and Muhammadans) was 60 and it is only 30 now. The binders (all Muhammadans) numbered 150 previously; their number has come down to 50 only. The pressmen, inkmen and fly-boys formerly totalled more than 100, their work is now done with only 60 hands. My point is that the introduction of the latest type of machinery with a large capital outlay has not appreciably reduced the cost of printing.

Jail Press. With regard to the Jail Press also I am afraid an enquiry of the like nature is immediately necessary. The system of overtime allowance to permanent salaried hands of the Press was objected to by the Auditor-General sometime in 1911-12. Consequently Lt.-Col. J. Mulvany, I.M.S., the then Superintendent of the Jail took up the question of introduction of jail working hours from 6-30 a.m. to 4-30 p.m. with increased rate of pay. The question of the amalgamation of the office of the Forms Department with that of the Jail Press for the utilisation of convict labour and better working of the Department also came to be considered along with it. And it was decided that both the Departments would be amalgamated and administered by a newly created officer who should be called the Press and Forms Manager and would be in charge of the Department under the control of the Superintendent of the newly-created Central Jail, Alipore. In the year 1914, when the employees were asked to accept jail working hours with 33 per cent. increase of pay, they refused to do so on various grounds, the question of holidays being one of them as they apprehended that with the inauguration of jail working hours they would be deprived of all the holidays excepting the nine jail holidays in the year. Accordingly, they continued attending office as before from 10-30 a.m. to 5 p.m. on the old scale of pay. The employees were at length persuaded by the Government to accept jail working hours on an explicit understanding from the Government that they would get an increase of 33 per cent. over the pay they were drawing at the time in consideration of the increase in the hours of working and would also continue to enjoy all the gazetted and local holidays and leave at 2 p.m. on Saturdays as they enjoyed before, but prospective employees would have to work jail hours with jail holidays only and on the old rate of pay, that is, they would not get the said 33 per cent. increase. A revised scale of pay on a more liberal basis has been granted to the employees of the other Government presses not only in Bengal but all over India in view of the fact that the cost of living has gone up without curtailing any of

the existing privileges, but, unfortunately a differential treatment has been accorded to the employees in the Jail and Forms Press: they have been deprived of all the gazetted and local holidays which they previously enjoyed and also leave at 2 p.m. on Saturdays, the solemn pledge of the Government notwithstanding.

By repeated representations the Government have sanctioned extra casual leave for ten days in lieu of the gazetted and local holidays of about 44 days in the year. The result is that they have to take leave on average pay to enable them to enjoy the local and gazetted holidays as the concession granted is too inadequate for the purpose. If they have to perform or attend any religious function enjoined by their religion they have to take casual leave or leave on average salary or other leave on private grounds which is really a hardship on the employees.

Again, it was decided by the Government in 1914 that in consideration of the acceptance of the jail working hours, the old employees would get 33 per cent. increase in their salary at every stage of promotion no matter whether they are permanent or temporary. But, with the introduction of the time-scale the system of 33 per cent. increase has ceased and three men are now drawing the same scale of pay as the new hands. Here also, the Government has broken its own pledge. According to the revised scale of pay sanctioned by the Government for all the employees without distinction of old and new, it requires 31 years to complete the grade whereas the employees have to retire after 30 years of service. I put it to the House to judge for itself the peculiarity of such a grade. I fail to understand how it will benefit the employees. The scale ought to be fixed in such a way that there may be a chance of reaching the maximum by those for whom it is intended. This is what we outsiders understand.

I may note here in passing the indiscreet distinction that is being observed between a few posts in the clerical and technical staffs in the Jail and Forms Press and the Bengal Government Press. The case of the Head Readers for instance of the two presses may serve to illustrate my point. In the Jail and Forms Press the pay of the Head Reader is Rs. 110 to Rs. 150 whereas his brother officer in the Bengal Government Press draws Rs. 300 to Rs. 400. This unjust distinction is maintained in the case of other readers as well. The pay of the Jail and Forms Press readers ranges from Rs. 60—2—100 whereas in the Bengal Government Press their pay ranges from Rs. 110—10—250, I say that there is no legitimate and just reason for such wide distinction. The work of the readers in the Jail and Forms Press while being in every way similar to that of his brother readers in the Bengal Government Press is made difficult in view of the fact that they have to deal not with ordinary people but with convicts and criminals. I am emphatically of opinion that this

wide gulf of difference ought to be bridged over in no time. Sir, if the Hon'ble Member is prepared to accept this resolution with reference to one part, namely, an enquiry into the working conditions prevailing in the Press, I shall be satisfied.

Srijut NAGENDRA NATH SEN: Sir, in seconding the resolution of my friend, I shall confine myself to a short statement of facts, and specially to items 2 and 4 of the proposed terms of reference. At the outset I must tell the hon'ble members of this House, and especially the members of the Treasury Benches, that if this resolution is carried it will not entail any extra expenditure on Government, as it only asks for an investigation into certain matters, which it is hoped will cause a saving of public money. The unsatisfactory state of affairs in the Government Press which have been occasioned by the idiosyncrasies of a particular officer I mean Mr. Norton requires investigation. Mr. Norton has been in office as Superintendent of the Bengal Government Press for over twenty years. During this long period of his incumbency, facts have repeatedly been brought to light, especially during the last few years, which show how his inefficiency and unsympathetic behaviour towards the employees have caused huge waste of public money and untold sufferings to the poor and helpless workers. It may be in the recollection of the members of this House that in January last there was a so-called strike, which lasted for the short period of two or three hours, and which was nipped in the bud through the prompt and immediate efforts of the organising Secretary of the Press Employees' Association, Mr. Indu Bhushan Sircar. But although this strike was called off very promptly, the workers of the Bengal Government Press have had a very bad time of it since then; and not only Mr. Norton himself but also his Overseer and Deputy Superintendent, Mr. Anthony and Mr. Davis, respectively, have made the lives of these poor people unbearable.

11-15 a.m.

It has been reported to us that they indulge in issuing such expressions to their subordinates as: when are you going to down your tools? What does your Ma Bap Association say, etc. It is only with a view to draw public attention to these facts that I have adverted to those things. As I have already submitted, Sir, this resolution does not want an extra expenditure to be borne by Government, but rather a reduction in expenditure and I shall tell the House that the gravamen of the charges against Mr. Norton and his subordinates can be said to be a huge waste of public money brought on by his inefficiency and unscrupulousness. Formerly, before Mr. Norton came to occupy the "gadi" as Superintendent, the old system of types were used in composing and this is, Sir, still the practice

in the Government of India Press and for the matter of that all mercantile presses in Calcutta. And this "old system of types" I may put in here, is not only economic but also benefits the workers. But Mr. Norton would have nothing to do with it. Accordingly in 1910 he got it into his head to inaugurate the point system and had machines for that purposes imported from England at an enormously huge expenditure and disposed of the "old system of types" in a manner about which we are quite in the dark. It is rumoured that half of those old system of types were sold away while the rest were melted. I understand that all attempts to elicit any information on the point have hitherto proved unavailing and in this connection I wish to draw the attention of members of this House to the reply of Government to Dr. K. S. Ray's question in the August session, 1927.

Four years have not elapsed since the inauguration of the point system when it suddenly dawned upon Mr. Norton that he should give a trial to Lino and Mono machines. No sooner thought than done! Early in 1914 Lino and Mono machines went, it is believed, the same way as their predecessors, that is to say, the rumour is that they have been partly sold and partly melted and the public is as benighted of the latter's fate as of the former, no amount of questioning in the Council being of any avail.

I am told that as many as six Mono machines, each valued at between twenty to thirty thousand rupees, are lying unused stained with grime and dust in the spacious halls of the palatial building at Alipore. I say nothing but truth when I say that the number of machines imported has been far in excess of demand, and I understand efforts are being made to dispose of the machinery. If the House agrees to the resolution, the necessity for a direction to be given to the Superintendent not to dispose of any machinery pending enquiry, will be clearly brought home to the authorities if they would only condescend to look into the record of idle hours that the Mono-operators get per month.

Again, formerly there were about sixty hand-presses of which only three survive to-day while the rest have been sold away a pet contrivance with the present Superintendent, and the fun of the matter is that there is no record of this alleged sale as the Government reply to the question of my friend Dr. K. S. Ray in the last August session of this Council shows. These hand-presses, I may inform the House, were used for printing and are still in vogue in the Government of India Press and other well-known presses, because, Sir, they are found economic and labour-saving. But Mr. Norton has unnecessarily caused them to be displaced by far more costlier machineries. In this instance also Mr. Norton has kept up his

tradition of buying in excess of demand, as is evident from the fact that so many as ten printing machines are lying unused, each valued at between twenty to thirty thousand rupees. I may submit, Sir, that if any of these accusations is proved, Government will take proper action.

This, by the way, has caused a great havoc among the poor workers by doing away with the services of many of them and has indirectly swelled the number of the unemployed.

Sir, this step would have been justified if it could be shown that Government has been any the gainer for it. In other words if it had been economic to the Government Mr. Norton could be justified in indulging in any number of frolics. But, Sir, Government has not been a gainer. This system has not resulted in any saving to the Government because the time taken to complete the work is the same as before while the loss is greater as will be clear from the fact that a work which costs 2 annas 6 pies (per hundred copies) in the hand-press costs 7 annas 3 pies if done by machine.

The only other ground on which it can be supported is the benefit, if any, it has conferred on the workers. Sir, it has not made for that either. The earnings of the fly-boys attached to a hand-press do not exceed Rs. 8 to 9 per month and that of the pressmen do not exceed Rs. 25 per month, due to the work being diverted to the machine section.

Sir, I was painfully shocked when in the last August session of this Council the Hon'ble Sir J. Donald came out with a blunt "No" in reply to the question of my friend Dr. K. S. Ray as to whether any amount had been realised, and if realised, the extent of the amount as discount on the purchase of machineries by the Bengal Government Press. I am told that private parties get from 20 per cent. to 25 per cent. discount whenever they buy a machine. Is it not astonishing, Sir, to hear that the Superintendent of the Bengal Government Press—who during his incumbency has purchased machineries to the value of not less than 90 lakhs of rupees—did not get discount or to say more properly, did not care to get it? I leave it to the House to judge and decide.

Without indulging in any more prolixity on the subject of purchase of machineries I shall now deal with the successive transfers to which the Bengal Government Press has been subjected by Mr. Norton. The history of these successive transfers brings to light a tale of disastrous waste of public money and attendant woeful harassment to the workers.

One night in the first week of January, 1914—it was a Sunday and the office was closed—a fire broke out, as if by magic, in a locked up room on the second floor of the Writers' Buildings. The

very next morning Mr. Norton had three sections of the press transferred to Koilaghat Street in the premises where the Eastern Bengal Railway offices are now located, while the remaining sections were allowed to remain where they were. Now, the fate of these people who were thus transferred so abruptly and without apparently any rhyme or reason is better imagined than described, who were before the completion of two summers, again transferred to Sealdah E. B. Railway office without even a thought to their convenience or otherwise. Nor is this all. They had to undergo yet another change to satisfy the capricious whims of their master. This time Mr. Norton had an extensive plot of land purchased at Alipore and a huge establishment in the right royal fashion with extensive quarters for the Superintendent and a doubly extensive area for cultivating plantains, cauliflowers, etc., and flower orchards was set up, the palatial building for accommodating the Printing Department occupying only a small portion of the total area. The building which accommodates the Government Printing establishment though insignificant when compared to the total area, is, however vast enough for the purpose, so much that at present the printing department occupies only a minor portion of the huge building despite all Mr. Norton's efforts to engage the whole building by purchasing an unnecessarily large number of machines which are lying unused in a miserable condition. What I am endeavouring to shed light upon, Sir, by these woeful tales of transfers and the ultimate setting-up of an enormously huge establishment, is the sheer waste of public money on the one hand and the untold miseries suffered by the unfortunate employees on the other which they have necessitated, when I recall the fact that the Writers' Buildings, the old venue had been sufficiently large to accommodate the Printing Department of the two Provinces, viz., Bengal and Bihar and Orissa. That Bihar and Orissa had separated and even before that the Forms and Jail Press had separated with a manager at its head. And now we are told that the Writers' Buildings is insufficient and cannot accommodate this shorn-off Bengal Government Press. Sir, if this is not waste of public money, I confess I fail to comprehend what it is. And indeed I was taken aback by the blunt reply of the Government to the question of my friend Mr. Hemanto Kumar Sircar in August, 1925, when he asked the Government to inform the House the nature and extent of the expenditure involved in the said transfers. And, what did the Government reply, pray? Mr. Donald non-chalantly remarked: "there is no record.".

Sir, I shall take only two minutes more to show that the administration of the Government Printing Department of Bengal has been steadily growing top-heavy. Before the separation of the presses when the Bengal Government Press singly had to perform, in addition

to its own work, the work of the Bihar and Orissa Government as also the work now done by the Forms and Jail Press, there was only one Superintendent aided by one Deputy Superintendent and only two Overseers. And the management had to face no difficulty, and no murmer was heard. At least we have not heard of it. The year 1908 saw the separation of the Jail and Forms Department which since then had its own Manager and in 1911 the Bihar and Orissa Government separated from Bengal and established their own press. Consequently, the quantity of work was much brought down. But instead of the reduction of the supervising staff, which at least would have been more plausible, we had an increase inasmuch as one Deputy Superintendent and two Overseers were now replenished by two more Deputies and three additional Overseers making up a total of three and five, respectively. Still complaints and murmurs crop up now and again that the pressure of work is too heavy which of course is no sign of smooth-working and efficient management. (Here the member having reached the time-limit resumed his seat.)

11-30 p.m.

Maulvi ABDUL KARIM: Repeated complaints have been heard regarding the arbitrary and capricious treatment of employees in the Printing Department. Perhaps there is no other department, if I have been rightly informed, where service is so insecure and where favouritism plays such a conspicuous part.

I understand, Sir, a number of piece-workers (machinemen and inkmen) were dismissed within a period of six weeks in December and January last. They were given no notice and they received no written orders. They were orally ordered out of office and in spite of all their efforts they have not been able to ascertain the reasons why they have been dismissed. It has, however, been guessed that their services were dispensed with because they had the audacity to submit, though through the proper channel, a memorial to the Hon'ble Mr. Marr regarding their harsh and unsympathetic treatment by the supervising staff, who, I have been told, do not hesitate to call them pigs and sons of pigs. I would not take up the time of the hon'ble members by citing specific instances of ill-treatment. But I may say that facts regarding several cases have been supplied to me.

The lot of the unfortunate piece-workers is a hard one. This is chiefly due to the vagaries of their superior officers, who are generally apathetic to their interests and callous to their sufferings. As a rule their representations are not taken into consideration and their grievances are not redressed. Their promotion depends solely on the whims and caprices of the higher officials. Sometimes senior men with years of satisfactory service to their credit are kept back while juniors, in some cases even of questionable character, are transferred

to other offices on promotion. The salaried hands who were already drawing higher pay, have since 1920 got two instalments of increment, but the poor piece-workers have not received any increment during this period. On the contrary, they were the victims when reduction had to be made. The recommendations of the Piece Enquiry Committee of 1925, as far as I am aware, have not yet been given full effect to.

Inefficiency does not seem to stand in the way of promotion of the piece-workers. Nor have they been accused of dereliction of duty. Besides, if my information is correct, there has not been a single case of misdemeanour or misappropriation against them since 1910, whereas instances of such irregularities on the part of salaried hands are not wanting.

One other thing to which I would like to draw the attention of the hon'ble members is what is known as "Compassionate Fund" in the Government of India Press. All fines accumulate and employees in distress are helped. The Bengal Government Press has no such system. The whole amount of fine realised from the employees (last year Rs. 2,231 was realised) is credited to the general revenue of the Province. If the fines realised were allowed to accumulate and kept apart for helping employees in distress, it would have gone a great way in mitigating the sufferings of the poor piece-workers. In the circumstances stated I have no hesitation in supporting the resolution moved by Mr. K. C. Ray Chaudhuri. I think a strong case has been made out and I trust the Council would insist on a sifting enquiry in the interests of justice, economy and efficiency.

Maulvi LATAFAT HUSSAIN addressed the Council in Urdu, the English translation of which is as follows:—

"Mr. President, I support the resolution of my friend Mr. Ray Chaudhuri as a representative of Labour. It is my duty to voice the grievances of the labourers and to press them before Government who has given special representation to Labour and look to us to place its demands in a reasonable and proper manner. We are grateful to His Excellency the Governor for his sympathy towards the labourers as voiced by him in his speech to the Kankinara Labour Union; but it is a matter of regret that Government officers and employers' agents who come in contact with labour has very little sympathy with the labourers. There would be no strikes in Bengal if the officers in touch with labour approach the difficulties with smypathy and with a desire to do justice. They turn a deaf ear to the grievances of labourers, they become harsher and more antagonistic. A reference to the superior yields no better results. On the other hand we find them unapproachable. I ask the Government—'Are we not entitled to have the justice, and will Government not do justice between us

and those who are in charge or in direct control of labour?' Real labour leaders like Mr. Ray Chaudhuri, Kisori Lal Ghose and Mrinal Kanti Bose are always desirous of settling cases amicably. But what was the reply given by Mr. Norton, the Superintendent of the Bengal Government Press, instead of showing an amicable spirit he gets annoyed and more troubles are given to labourers even to the extent of dismissing some of them. It is persons like him who drive the labourers into the arms of those who always cause strikes. These so-called leaders await opportunities and make capital out of them. If the workers get proper relief from the officers through the actual leaders of the union this would never happen. It is people like Mr. Norton whose action serves to diminish the influence of honest labour leaders who believe in orderly progress and amicable relationship between the employers and employees. I think that a very strong case has been made for a committee. Mr. Norton and Mr. Davis have failed in their duty towards labour and towards the Government and it is necessary that the dispute should be settled as early as possible by investigation through a committee."

Babu JITENDRALAL BANNERJEE: On a point of order, Sir. May I ask the Chair whether he has followed everything that my friend has said?

Mr. PRESIDENT: It has been Greek to me, but I have asked the Deputy President who understands Urdu to wake me up whenever it was necessary.

Srijut RADHA GOBINDA RAY: After the interesting speeches that we have heard on this motion, I became a little nervous as to whether I should rise at all to speak. But as this is an important matter, I want to say something and I shall be as brief as possible.

I have no grudge against the Government of Bengal Printing Press, but I cannot help speaking something about its management which is so very bad at present that it requires immediate attention of the Government for rectifying it. In no other department of Government such rank partial treatment prevails between the salaried hands and those employed under the piece system—the difference of treatment is so very great that it requires immediate remedy. The difference in earnings of the salaried hands and those who work on piece system is regretable, and the extraordinary high rate of pay paid to the salaried hands in comparison to the income of those who work on piece system should be taken note of.

In recent months a few piece-workers have been dismissed without notice for no reason whatsoever. I have been informed that the only offence which these poor men committed was that they sent a representation to the Hon'ble Mr. Marr, protesting against the haughty behaviour of some of the members of the supervising staff. I think

I can give you ample proof of the haughty behaviour of the supervising staff, but I am not going to do that now. With reference to the question of dismissal, I have been told that it is extremely arbitrary and wholly groundless. These officers have sent a memorial to Government to which a reply has yet to come. Dr. Kumud Sankar Ray asked the Hon'ble Member in charge in this House a question and the Government in reply gave him to understand that the piece-workers had been systematically starved, for they were not getting the wages with which they could make two ends meet. A consideration of the following figures will give you an idea how the earnings of the salaried hands are steadily increasing:—

		Before 15th July 1920.	*Present pay.*
Overseer	...	150	300
Copy-holder	...	30	60
Time-keeper	...	40	80
Head clerk	..	150	300
Head Computor	...	75	200
Other clerks	...	115	202
Other Computors	...	53	111

The above figures are taken from the reply of the Government in the last December session of the Council to the question of my friend Maulvi Latafat Hussain. Again, the treatment accorded to the recommendation of the Piece Enquiry Committee of 1925 which submitted their recommendations in June 1926 serves also as an eye-opener. I am told that Mr. Norton has given the piece-workers to understand that because the Government of India have done nothing to improve the lot of the Government of India Press, therefore it is not possible for him to do anything for them. I frankly confess, Sir, that I am not in a position to comprehend the significance of Mr. Norton's statement. There is no such relationship between the two presses as Mr. Norton would like us to believe.

11-45 a.m.

The astounding disparities that exist between the two confirms our belief. For instances, (1) in the Government of India Press the lino operators are salaried hands while their brethern in the Bengal Government Press are piece hands; (2) the Government of India Press have got a Compassionate Fund made up of the accumulated fines for helping the needy and distressed employees, while in the Bengal Government Press the amount collected through fines is absorbed in the general revenue of the province; (3) the assistant section-holders in the latter press get Rs. 40-4-80 per month, while the same persons in the former get Rs. 70-4-98 per month; (4) the pay of the forme carriers and coolies in the former ranges from Rs. 20 to Rs. 25, while

the pay of this class of workers in the latter press ranges from Rs. 18 to Rs. 19. The readers in the Government of India Press draw Rs. 110-5-150, and in the Bengal Government Press Rs. 110-10-250. It is enough to show the disparities that exist in the Government of India Press and the Bengal Government Press. As regards the promotion, I am told it is done in a very whimsical way. There is no departmental examination or anything of the sort. Whims and favouritism run rampant in matters of promotion in this department of Government. In matters of transfer also, favouritism and corruption play a very important part. Before I conclude I desire to mention that the amount of fines realised last year in the Bengal Government Press amounted to Rs. 2,231-7-0. If such a decent sum be allowed to accumulate and kept apart for the use of the employees in distress, it will go in a great way to help the needy and poor people in distress. Intelligence, and benevolence of such a move cannot be over-estimated. Therefore I think, Sir, that this sum should be set apart for helping these poor people. With these observations, I beg to support the resolution of Mr. K. C. Ray Chaudhuri.

The Hon'ble Mr. MARR: Mr President, Sir, I must oppose this resolution. The resolution moved by Mr. K. C. Ray Chaudhuri refers to several presses, viz., the Government of Bengal Press, Alipore, the Forms and Jail Press and the different Settlement Presses under the Government of Bengal. I will take the last item first. As far I could hear, the Settlement Presses were not mentioned at all in the course of the discussion. I think it is right, however, that this House should know what the conditions in the different Settlement Presses are. The work done in them, as most of you know, is of a very special nature, and is done by a specially trained staff conversant with settlement records. At present, printing is going on in only three places, viz., Jessore, Chittagong and Murshidabad. The presses, I may mention, are all hand-presses, and the number of presses employed in each place varies from 10 to 16 and the number of compositors varies from 60 to 80, at the rate of about 6 for each press. All the settlement records are printed in these presses, special galleys and block types are used. All compositors are on job and contract and their average remuneration is about Rs. 45 a month. They are allowed Sundays and all gazetted holidays and they observe the usual office working hours. As I have said, the presses in use are ordinary hand-presses; as only 8 pulls are taken of each sheet, fast printing is not necessary. All the work is done in Bengali and the men can only work in Bengali type. They are, as I have said, on piece work and we have not yet had any complaint whatsoever from any of the Settlement Presses.

Now, let me come to the Jail Press. In the first place, the Jail Press is peculiar in itself; all the work is done by convicts; and

secondly, all the work consists of the printing of forms. All the forms used in Bengal and also in Assam are printed there. The work is, therefore, what I may call practically mechanical. Naturally, the amount of work in the Jail Press varies according to the number of forms ordered; and we can never forsee what the amount of work is to be. On the amount of work depends the number of convicts employed. The convicts work under the instructions of some paid hands. The working hours are laid down in the Jail Code; Mr. Ray Chaudhuri referred to this matter of working hours. I think it is quite obvious that when there is work to be done in the Jail Press where convicts have to be employed, the paid hands can only get the holidays on which the convicts are off work. In other matters these paid hands are governed by the Civil Service Regulations and the Fundamental Rules. I may remind the Council that there are non-official visitors of the Alipore Jail and as far as I know, two of them are members of this House. Up to now we have never had a single complaint from any of the visitors as regards the conditions of work there. There is one other point which I ought to mention as regards the Jail Press. Mr. Ray Chaudhuri drew attention to the distinction between the pay of the head reader in the Bengal Government Press and that of the head reader in the Jail Press. The work of the two men is totally different. The head reader in the Jail Press has only to watch the printing of forms which are of a stereotyped character, whereas the head reader in the Bengal Government Press has totally different work of a much more responsible character, and a comparison between the pay of these two men is altogether beside the point.

Now, let me come to the Bengal Government Press. Every speaker has mentioned the question of the dismissal of men. Now, I should have thought that, where a piece system depends on the amount of work that goes into the press, it is perfectly clear that at certain seasons there is a good deal more work than at others. I do not think any one in the House will maintain that piece hands should be kept on when there is no work for them to do. At times there is much more work going on, especially when the Council is sitting, than, say, two or three months hence when the Council will not be sitting. Therefore, it should be clear to this House that hands have to be discharged at certain seasons and taken on again at others. Mr. Ray Chaudhuri referred to a reply of mine that after the dismissal of those six men that he referred to, no new men had been taken on. That was at the time, but I may mention that Mr. Norton must have since then taken on new hand, especially in connection with the work of this session.

Babu Radha Gobinda Ray has referred to the two systems of work, viz., the piece system and the salaried system. It is quite

clear that, when we are working on a piece system such as we ha in the Government press, we must have a certain section of the sta on piece work and the others, who are doing regular work, on salaried basis. I shall mention later how the prospects of the piec workers have been improved.

Mr. Abdul Karim spoke of the piece system being on an insecur tenure. I may mention at this point that 75 per cent. of the piec establishment has been put on a permanent basis and their previou service has been allowed to count towards pay and pension. Sino then still more of the piece establishment has been put on a perma nent basis. Therefore, as regards a great majority of the piec establishment the tenure is as secure as any other tenure unde Government. I shall now refer to one section of the piece estab lishment, viz., the lino operators and mono operators. In las February, Mr. K. C. Ray Chaudhuri moved a resolution which wa carried in this House, asking that these operators should be put on a salaried basis. Government could not see their way to give effect to that resolution. But, in the course of examining that question, we found that, with the reduction in the cost of printing and with the increase in outturn, we could put up the piece rates of these lino men, which we accordingly did. Orders were passed to this effect about two months ago.

I am afraid I could not follow Mr. Sen's remarks very clearly, but as far as I could follow them, they seemed to be an attack on Mr. Norton. He started, first of all, by saying that the change to Alipore was absolutely unnecessary, that the old presses at Writers' Buildings and Sealdah, which were able to do the work of two provinces before, should have been able to do the work of one province. I would remind Mr. Sen that in those days we had not a Council of 140 members, we had not the long sessions that we have now, we had not the number of questions asked, nor the number of resolutions moved, as at present. Apart from that, and I am sure Mr. Ray Chaudhuri will agree with me and will admit it in his reply, the press in Writers' Buildings was an absolute scandal. It was overcrowded, there was no ventilation, and even with a large number of exhaust fans the atmosphere was awful. The number of lead poisoning cases was such as would have justified the Factory Inspector to run us into the criminal court at frequent intervals. Mr. Ray Chaudhuri knows that it was in order to remedy all that, that we moved out to Alipore. Mr. Norton had nothing to do with the amount of land acquired there or the layout. I did all that myself. He advised us only as regards the accommodation required for the presses and other machinery and details of that sort.

12 noon.

Now that the press is out there, I think Mr. Ray Chaudhuri will agree with me that, apart from the question of the condition of the workers themselves, there is not a press in Calcutta working under better conditions. I challenge any member of this House to show me any press in Calcutta, either private or of the Government of India, that is better than the Government Press at Alipore.

Mr. Sen went on to argue that we should not have given up the old system of hand-press. In fact, he went so far as to say that hand-presses were more economical and more labour saving than the present machinery that we have in the press. If that is so, I cannot understand his other remark that the introduction of monos and linos has resulted in a reduction of staff. I do not think any one will take his argument seriously that it was a retrogression for us to put in steam presses, followed by linos and monos. All this progress is due to Mr. Norton and it is greatly to his credit that he has brought the press to its present state of efficiency. I should like to remind the House at the present moment, if we had followed Mr. Sen and stuck to the old hand-presses, as to what would have happened to the present Bengal Tenancy Act Amendments. We should have had to adjourn the House for two months to get these into the hands of the members. Mr. McKay informs me that this bunch which I hold in my hand, consisting of Part III of the 1343 amendments, was delivered by the press in 24 hours. I consider that as very very good work on the part of the press. Mr. Sen made some remarks about private purchasers of press machinery getting a discount of 20 per cent. I could not follow his remarks but, if there was any intention on his part to hint that Government did not get that discount and that the discount went into Mr. Norton's pocket, then I strongly resent the insinuation. All this machinery is ordered by us through the High Commissioner and it is purchased either in Great Britain or America. The High Commissioner buys and pays for the machinery and sends it out to India and Mr. Norton has got nothing to do with it except to fill up the indents.

Mr. Ray Chaudhuri referred to those two accidents about which he has asked several questions. He also referred to what I told him in private conversation as regards the inkman. I thought it would be better myself to see the inkman who met with the first accident, since there such a fuss about that accident. It is true that the accident occurred in December and I saw him in March. It was not of a serious nature, otherwise the after effects would have still been there; the injury was to the top of the fore-finger of his right hand and there was not a single mark on the finger when I saw him. He did not get the benefit of the Workman's Compensation Act, because he deliberately disobeyed the rules as regards working

the machinery and the accident was found by the Factory Inspector to be due absolutely to the inkman's own fault. Mr. Ray Chaudhuri also mentioned the grievance of a certain portion of the extra piece establishment having been discharged on one month's notice. He is perfectly correct in that. These men were discharged on one month's notice under a misunderstanding. It was afterwards found that under the new rules they were entitled to three months' notice. Therefore, as they could not be given the other two months' notice, we paid them two months' pay as compensation. I think that will satisfy Mr. Ray Chaudhuri.

Now this resolution is a request for a committee to enquire. Every speaker mentioned the Piece-Workers' Committee of 1926 and every speaker practically hinted that Government had done nothing on the report of that enquiry. I am not surprised at other speakers not knowing anything about it, but I should have thought that Mr. Ray Chaudhuri would have kept himself up to date and that he would have been acquainted with what we have done on this report.

Mr. K. C. RAY CHAUDHURI: I asked when the recommendations would be given effect to.

The Hon'ble Mr. A. MARR: There were 11 recommendations:—

(*1*) That a monthly and yearly statement of the average pay, etc., of compositors, etc., be prepared to enable the Superintendent to stablise the earnings of the men.

That has been given effect to.

(*2*) That certain rules be adopted for supervising the work of section-holders and checkers.

That has been done.

(*3*) That the grade rates for "hour" work should be actually adjusted to the average rates drawn for piece-work during regular hours by raising the maximum rates.

That has been given effect to.

(*4*) That 75 per cent. of the present number of each class of piece-workers should be put on the permanent establishment where that percentage has not been reached.

As I have mentioned before in regard to Maulvi Abdul Karim's remark, this has been given effect to. Since then we have put more than 75 per cent. on the permanent establishment.

(*5*) That arrangements should be made bringing the piece-workers more directly under the Civil Service Regulations or whatever rules may take their place for the purpose of pensions.

That has been given effect to.

(6) That the older hands should, if they desire it, be put on to lighter work.

That has been given effect to.

(7) That a suitable Provident Fund for future employees should be instituted as soon as possible.

That has not been given effect to, simply because we are awaiting the decision of the Government of India regarding their press. They are working out the rules and we are awaiting those rules. As soon as those rules are received, we shall consider them.

(8) That, after 10 years' service, the 16 days, holidays at present allowed should be increased to 23 days, and after 15 years' service to 31 days.

That has been given effect to.

(9) That sick leave at one-half rates for a month should be allowed during the year to regular workers.

That has been given effect to.

(10) That gazetted holidays should be treated as overtime.

That has been given effect to.

(11) That a Works Committee should be established.

That has not been given effect to.

This committee, I maintain, was as good a committee as Government could have got and it examined the whole position very carefully. They submitted an excellent report with these 11 recommendations. One of these recommendations was not accepted and one is pending a report from the Government of India, while the other 9 have been given effect to. I therefore cannot see that there is any need for a further committee now. I must oppose the resolution.

Mr. K. C. RAY CHAUDHURI: Mr. Marr has not gone into the points raised by me as satisfactorily as I would have liked. For example he justified the dismissal or reduction by the fact that it was a slack season but he could not justify his action for not reemploying of those dismissed men when the slack season disappeared. Those who are paid at piece-rate can easily be taken in during a busy season. My point is that these men were not taken in because they were suspected to be disaffected and to be the ring-leaders of the discontented men; Mr. Marr did not want to take these men because of the interference of Mr. Norton in the matter. A Trade Dispute Bill is going to be passed into an Act and this statute will strengthen the hands of the trade unions. When the Trade Union Act is passed every Government official should know that the labour unions registered under the Act have got to be recognised and there must be negotiation with them when there is any trouble and that they must

take into account the representations submitted to Government. Here at present because the Press Employees Union is not recognised by Government the Government of Bengal refuse to have anything to do with it. But what is being done in the case of other services under Government of India. Take for instance the postal service. Sir Bhupendra Nath Mitter recognises the Postal Employee's Union. Sir Bhupendra Nath Mitter, as Head of the Industries Department of the Government of India, discusses the merit of representations submitted by the postal employees through the Postal Union and as a result of that he raised the pay of the postal poens. The same applies to the Indian Telegraph Union which is under Mr. Barton's excellent management. There also a healthy spirit of co-operation between Government and the Union prevails, when there is a grievance and representations are made to Government for its removal, Sir B. N. Mitter opens negotiation with the Union, discusses the matter with them and the result is there is harmony where there has been a discontent. But here although I am called a Labour Member I am not consulted and even when I approach the Government my suggestions are not accepted. I did enjoy the confidence of Government at the time of Sir John Kerr and Sir James Donald but I do not enjoy it now although I hope that Mr. Marr will take me into his confidence it not now a little later. In these matters I am expected to be reasonable because I am known to be free from any political bias.

As regards the recommendation of the Piece-work Enquiry Committee the most fundamental part of them has not been given effect to. Regarding the benefit of the Provident Fund to those piece-workers we are told that negotiation is going on with the Government of India but we are not told how long it will take to come to a decision. The solution of labour troubles in future, I say from my experience of labour, lies in the constitution of Works Committee, which is not a new thing and which has worked splendidly in the Government of India Press. Sir B. N. Mitter has recognised the Works Committee and whatever he does he does after consulting that committee. After all what is a Works Committee? It is a committee which consists of representatives of different departments—representatives of the employees, representatives of the officials and the members of that committee sit together once a month and discuss problems affecting labour welfare. I do not understand why Mr. Norton is afraid of such a committee, and Mr. Marr has not advanced a single argument to show why Mr. Norton should not constitute a Works Committee. It was started in the Government of India Press by no less a person than Sir Atul Chandra Chatterjee, when he was a Secretary of the Government of India. Sir B. N. Mitter has blessed it Mr. Marr has said that out of 11 recommendations 9 have been given effect to and I agree but I will tell him that the sooner he gets the Government of India to

agree to the Provident Fund the better. How is it that the Government of Bengal is sitting idle over it? It may be something like a formality but surely they must have a move on and they must satisfy the Council as to the reason why Mr. Norton refuses to constitute the Works Committee.

About the accidents Mr. Marr referred to, he himself admitted that the man got his forefinger injured in December, was seen by him in March. Does he mean to imply by that during those months he could not be quite all right. Compensations are paid in private industries to persons who are injured in the course of their work. Why then deprive these poor men of a few rupees? Why is there so much agitation and discussion about this matter? Government is spending money here and there freely and liberally. Why is a workman, who attends a hospital for a week or a month for being injured in the course of work, deprived of the few rupees? I say, simply because Mr. Norton thinks that the man belong to a trade union. Let me utter one warning to Government. Do you know why is this spirit of Bolshevism, Communism or Sovietism, abroad? It is because that we the constitutional workers in the cause of trade unionism are taken no notice of. And as a result, agitators from outside come in and incite the workers to revolt. When I am talking of revolution, I mean industrial revolution. And when the men revolt, the Government says that it is the work of the communists and the bolshevists. Why does not the Government co-operate with us? This was the case in Lilloonh, because the people of the trade unions were not taken into confidence.

Sir, I cited the example of Sir B. N. Mitter who has been working in harmony with the Postal Employees' Union and the Telegraph Union. I submit that a regular organised union is not an enemy of Government: it only prevents outsiders from exploiting the ignorance of the workers, and from inciting them to direct action. That is, Sir, my last warning to the Hon'ble Mr. Marr. He refuses to have a committee. He could have said that he with somebody else —say, Mr. Cassells—would sit together and look into the matter. I do not press for a full-fledged committee with all its paraphernalia. The Hon'ble Mr. Marr could have said: "Let us see what allegation No. 1 is, what allegation No. 2 is, and so on." I say that you will have to do it sooner or later. We will summon you under judicial procedure, when the Trade Disputes Bill becomes Law, when you will have to bring your books and everything before the courts and before the public. So I say, why not make a beginning now, and show that you are in with the times?

Sir, I am very much sorry that Government cannot see their way to accept this recommendation for inquiry. If they had done so,

it would have reassured the public, whose spokesmen have spoken in the Council to-day.

The Hon'ble Mr. A. MARR: Sir, I might just mention for the information of the House that the arch-bugbear of Mr. Ray Chaudhuri, I mean Mr. Norton, will retire in another month.

The motion of Mr. K. C. Ray Chaudhuri was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Premotha Nath.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Bosu, Mr. P. C.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Rai Harendranath.
Choudhury, Maulvi Khershed Alam.
Das Gupta, Dr. J. M.
Dutt, Babu Saral Kumar.
Ghose, Babu Amarendra Nath.
Guha, Mr. P. N.
Himatsingka, Babu Prabhu Doyal.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A K. Fazl-ul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
Hussain, Maulvi Latafat.
Ismail, Khan Bahadur Maulvi Muhammad.
Karim, Maulvi Abdul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maiti, Babu Mahendra Nath.
McCluskie, Mr. E. T.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Naskar, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sanker.
Ray, Srijut Radha Gobinda.
Ray Chaudhuri, Mr. K. C.
Roy, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Nalinranjan.
Sarker, Rai Sahib Rebati Mohan.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Solaiman, Maulvi Muhammad.

NOES.

Abbott, Mr. E. G.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Casselis, Mr. A.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Cash, Mr. A. J.
Ghose, Mr. M. C.
Hopkyns, Mr. W. S.
Hussain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder
Momin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Parratt, Mr. F.
Prentice, the Hon'ble Mr. W. D. R.
Reid, Mr. R. N.
Sachse, Mr. P. A.
Stapleton, Mr. H. E.

The Ayes being 49 and the Noes 19, the motion was carried.

Revival of the Calcutta Rent Act, 1920.

Babu JITENDRALAL BANNERJEE: Sir, I beg to move the resolution that stands in my name. The resolution runs thus:—

"This Council recommends to the Government that immediate steps be taken to revive the Calcutta Rent Act, 1920 (Bengal Act

III of 1920) with retrospective effect from the 31st March, 1928, ar that Government be pleased to undertake the necessary legislatic regarding the same."

(A VOICE: We will oppose it.)

Sir, some of my friends are already crying out that they will oppo my resolution. Very probably they will, and I should like to ha the pleasure of seeing them oppose it.

Sir, my proposition is extremely simple. I want that a properl constituted and remodelled Rent Bill should be legislated by Gover ment, not as a temporary measure that is the chief point which want to make but as a permanent and integral part of the statut book. The ground of principle upon which I press my demand broad and simple. My position is this: that the tenant in Calcutt like the tenant in the mufassal requires protection requires protec tion from the greed, rapacity and extortionate demands of the lanc lord. He especially requires to be protected against arbitrar enhancement of rent and arbitrary eviction from the premises whic he occupies. Sir, these are the two points on which I should lik to lay stress, viz., protection against arbitrary enhancement of ren and protection against arbitrary eviction.

I do not contend that the tenant is not to be evicted at all. I the tenant proves a nuisance or is a habitual defaulter, he shoul certainly be evicted. But my point is that eviction should not depen upon the sweet will and arbitrary whim of the landlord.

Sir, so far as these two points are concerned, relief used to b given to the tenants by the Rent Act of 1920. This Rent Act, b setting up the Rent Court, provided a machinery by which ren could be standardised, and at the same time it protected the tenan from eviction by allowing him to deposit the rent in the Rent Court Sir, the extent to which these remedies were availed of by the tenant will appear from some striking figures which I am going to quote During the seven years that the Rent Act was in force, there wer altogether 6,000 standardisation cases, and over 50,000 cases o deposit 56,000 cases in all, in which relief was needed and relie granted. In other words, there were about 8,000 of these cases ever year in Calcutta. I should like the House to take note of thes figures, and to judge in their light of the extent to which relief wa sought and granted by the Rent Court. Sir, in March, 1927, by th necessary efflux of time, the machinery set up by the Rent Ac collapsed, and the people who up till then had been protected by th operation of the Act were left without any remedy at all

12-30 p.m.

What has been the consequence? I shall now place before you some other significant tell-tale figures which will be an eye-opener to many people. The Rent Act expired in 1927: in that very year there were 663 eviction cases in the Small Causes Court; and in the first six months of 1928 there have been 362 of these cases. Once again I should like the Hon'ble Minister and the House to consider the significance of these figures. There have been more than 600 eviction cases in one single year: and when we remember that in Calcutta, the total number of residential houses used for letting is well under 6,000, these figures will indicate how enormously high is the proportion of eviction cases: 600 out of 6,000 or 10 per cent! In other words, 10 per cent. of the tenants were evicted in 1927 and 5 per cent. within the first half-year of 1928; and it is for the purpose of affording protection to this large body of evicted tenants that I have brought forward my resolution. Again, most of these eviction cases were instituted against whom? against those people who had the temerity during the continuance of the Rent Act of having recourse to its provisions. The landlords are now vindictively pursuing those people who sought to protect themselves against their extortionate demands.

I will give two concrete and typical cases which will prove the truth of my remarks. The first is that of Dr. D. D. Hazra, who was, and, for the time being, still is in occupation of premises No. 8, Shyambazar Street. His occupation has lasted 28 years so it cannot be said that he is a mere casual tenant and he was always regular in the payment of his rent. His original rent was Rs. 50: in 1919 it was increased to Rs. 70 and the tenant submitted. But in 1922 the landlord demanded Rs. 110 an increase of more than 100 per cent., and now the tenant was compelled to seek the protection of the Rent Act, with the result that his rent was standardised at Rs. 67. But, Sir, mark the consequence. Now that the Rent Act has expired, the landlord, for the purpose of wreaking vengeance upon him, has once again demanded Rs. 110 as rent plus Rs. 600 as fine for his temerity in appealing to the law: and because the tenant has not been able to comply with this heavy and extortionate demand, he has been ejected, and the eviction will take effect from September next (Interruption). If the hon'ble members who interrupt will make themselves audible, then I should know how to protect myself; but inaudible interruptions are simply a mark of unmannerliness.

The next instance that I shall quote is that of Pandit Kedar Nath Kavyatirtha—it is another case from the northern quarter of the town. He was in occupation of a house for the last 30 years—certainly not a casual or run-away tenant—and he has always been most

regular in the payment of his rent. Originally his rent was Rs. 50. The landlord first demanded Rs. 70 and the tenant yielded: but when the landlord again demanded an increased rent of Rs. 100, the tenant could comply no longer and was obliged to have recourse to the Rent Court which standardised his rent at Rs. 52 per month. But, Sir, mark the consequence again. Now that the Rent Act has expired, the landlord, in order to wreak vengeance upon the tenant, has again increased the rent to Rs. 100 and has further demanded Rs. 500 by way of fine. And because the tenant was unable to comply with this demand he is going to be ejected from the premises.

These are only two instances, but they could be multiplied by hundreds. (A cry of question.) I hope those who question my statement will be ready with their figures and facts. Meanwhile I may tell my friends that I have taken my figures from the records of the Law Courts.

It may be asked what is the remedy? The remedy is that a proper Rent Act should be devised and passed not merely as a temporary measure but as a permanent Act. Sir, is there anything strange in this demand? Not to speak of other countries, even in India, we have permanent Rent Acts in Bombay, Rangoon and Karachi. And will it be contended that the need for the protection of tenants is less in Calcutta than in those large and growing commercial cities? Is it to be contended that in Calcutta the landlords are so overflowing with milk of human kindness that no protection is required for the tenants against their arbitrary and extortionate demands? What then is the objection to the demand? I am told that one argument is that it will hamper building operations; but I say, Sir, no such thing will happen. Let us appeal to experience. Has it hampered building operations in Bombay, Rangoon and Karachi? Then, what reason is there to suppose that Calcutta alone will prove an exception to the rule? No doubt rents would be standardised; but the Rent Court will so adjust matters as to ensure the landlords a reasonable percentage of return on their capital. Another argument which has often been trotted out and which may be trotted out to-day is that such an Act, if passed, will interfere with the sacred law of supply and demand. Sir, I complained on a previous occasion that there was a certain amount of kindergarten law in this Council: and now I find that there is a certain amount of kindergarten political economy as well. Otherwise the friends who trot out this stale, wretched, and outworn argument would have known that the law of supply and demand, which is absolute nowhere, is still less applicable in the case of land. Sir, there is only a given and limited quantity of land anywhere; you cannot go on

increasing or adding to its extent; and consequently there is always a tendency for the land to be monopolised in the hands of a few. And it is the duty of the State to interfere, and by means of legislation to check and remove the evil effects of this monopoly.

The last argument -also outworn - is this. The landlords may say that they can do what they like with their own. But this is precisely the point where I join issue with my opponents. I say that the land is not their own that they cannot do with it just what they like. These theories have been exploded long since. The State's duty is to intervene and protect protect those who are poor, helpless and inorganized and who are at a tremendous disadvantage on account of the monopoly and power concetrated in the hands of the landlords.

With these words I commend my resolution to the acceptance of the House.

Mr. J. CAMPBELL FORRESTER: I rise to say a few words in support of the resolution moved by Mr. J. L. Banneijee, but I must decline to follow him and give my support for a permanent Rent Act. All that is required in my opinion is a temporary Act to be carried on until the housing conditions become normal. I specially plead on behalf of what we in England term "the bottom dog". The poor people who cannot articulate who cannot express clearly their grievances I think these people have a right to be helped and they have a real genuine grievance and it is principally on their behalf that I give my support to this resolution. I wish the mover had worded his resolution differently. He ought not to have made it retrospective. We have got to remember that the Calcutta Improvement Trust has made a great clearance of small houses in Calcutta which has resulted in the displacement of the poor and middle-class people. Before such clearances were made suitable quarters should have been provided for them elsewhere.

So far as the European quarters are concerned, Sir, I admit there are houses in plenty, but the landlords are demanding fabulously high rents; the tenants or prospective tenants cannot pay so high rents and therefore the houses are lying vacant. So I think steps should be taken to increase the taxation on empty house.

Sir, for the last fortnight this House has been flooded with oratory over the rights of the poor cultivators and peasants. And I feel that if one is to gain the sympathy of the House his remarks should be brief. I shall make mine brief in the hope that by doing so I shall gain the sympathy of the House for this resolution and I

think, Sir, this is a most fitting opportunity for us to show sympathy with a class of people who have a real grievance.

Khan Bahadur Maulvi AZIZUL HAQUE: I rise to support the resolution moved by my friend Babu Jitendralal Bannerjee. Sir, Calcutta is said to be a city for the rich and the poor but I want also the middle-class gentlement to live here. Calcutta is already a place where living is dear and we should not add to their difficulties by allowing the landlords to increase the rents of their premises as they like. Mr. Campbell-Forrester has pointed out that owing to the operations of the Calcutta Improvement Trust there has been a great disturbance of small houses and holdings and it is necessary that some sort of protection should be given to people who have been displaced by these operations and who have not yet been able to adjust themselves to the resulting conditions here.

Sir, I also stand on general principles, viz., people with capital and land should not be allowed to tyrannise over the poor and it is with an eye to the interests of the latter that we should accord our generous support to this resolution.

Mr. Bannerjee has pointed out that after the Calcutta Rent Act had ceased to operate, the landlords with a view to wreak vengeance on their tenants who had the temerity to have recourse to the Rent Act had increased the rent which had created the greatest hardship in this city. Such cases are now taken to the Small Cause Court, but, Sir, it is a pity that the decisions of the Small Cause Court cannot be appealed against. Having regard to all these facts, I think that we should have a permanent Rent Act introduced in Calcutta.

Dr. BIDHAN CHANDRA ROY: Babu Jitendralal Bannerjee in moving his motion has given us many striking figures and in so far as it relates to the difficulty of the tenants in getting houses on reasonable rents, myself and my party have full sympathy with him. But the difficulty is that he has brought forward a motion by which it is proposed to revive the Rent Act of 1920 and bring it into operation not for a year or two but for all time. If it be a fact, as Mr. Bannerjee has said, that a large number of tenants suffer from great disabilities to-day, it is desirable that there should be a thorough enquiry into the matter, and if necessary the members of our party will bring in a Bill at the next session in order to remove such difficulties. The Rent Act of 1920, Sir, as we all know, came into operation under very difficult circumstances. It was.....

Babu JITENDRALAL BANNERJEE: May I just offer a personal explanation on this point? I was not particular about the Rent Act of 1920. I made it perfectly clear that what I wanted was a properly constituted and a remodelled Rent Act.

(At this stage the Hon'ble the President left the Chair and the Deputy President took the Chair).

Dr. BIDHAN CHANDRA ROY: When I referred to the Rent Act of 1920, I was merely referring to the resolution before the House. I say the Rent Act of 1920 was introduced under exceptional circumstances. It was then appreciated by the members of this Council that owing to post-war conditions it would be difficult for a tenant to get a flat or a house at a reasonable rent, partly because, as was suggested then, the owners of houses and lands had to spend a large sum of money and had to build houses at an exorbitant cost, and partly because the earning capacity of the people had diminished. It was then suggested that this Act would be in force for three years; it was afterwards extended for two years more and subsequently for another year. As the members of this House are aware, the members of the Congress party supported a measure of this character which came up before the House for discussion in 1925, but it was then merely a temporary measure. It has been pointed out by various members of our party that at the present moment there are more vacant houses and flats available than in 1920. It has yet to be investigated as to whether it is necessary that more houses should be built—so that as Mr. Bannerjee has suggested, the kindergarten law of supply and demand should operate. Sir, I am still in the kindergarten class, so far as this question is considered; unless it is shown that the landlords as a class have become more oppressive than before 1920, it is difficult to conclude that because there have been two evictions, because there have been oppressions by two landlords, the Rent Act should be revived. Therefore, I and the members of my party will oppose this resolution with the request to Mr. Bannerjee to bring forward a comprehensive Bill, soon. He has just now said that he does not insist on the Act of 1920 being re-enacted; if he brings in a Bill in future, I say with confidence that my party will support him. With these words, I oppose this resolution in this form.

Mr. L. T. MACUIRE: I rise to support this resolution. I find nothing convincing in the speech which has been delivered by the last speaker. The only argument put forward by him has been that there are a large number of houses vacant. That may be, Sir, for several reasons. It has already been suggested that one of the reasons is that the landlords demand rents which the tenants cannot pay and it is also evident that these landlords must be very well off for they can afford to let houses lie untenanted rather than reduce the rents. Dwelling forms the second necessity of life, food of course is the first. A man cannot do without a dwelling house, and therefore it is absolutely necessary that the members of the community should be provided with proper dwelling houses. We are told to consider the position of the landlords. What is their position? They seem to be

a very fortunate class. They leased out land in plots. For the very plot for which they originally got Rs. 20 and later Rs. 40 a month, they now demand Rs. 200 or Rs. 300. What is the reason for it? The reason is not far to seek. These landlords have a monopoly and the supply of houses is not certainly commensurate with the demand. Look at it from the tenant's point of view. What right have the tenant against the landlord? But he has this right against the whole State, that is, he must be provided with a dwelling at a reasonable cost. What is the reasonable cost? A reasonable cost, I think, upon which the most economists agree is that which does not exceed 10 per cent. of his income. What is the position to-day in Calcutta? I speak principally for people, whose salaries range up to Rs. 300. I do not think you will find a single man with a family in Calcutta, whose income is Rs. 300, who has got anything like a respectable and decent accommodation at 10 per cent. of his salary. For any body to get a respectable accommodation in Calcutta, he has to pay considerably more than 20 per cent. of his salary. If that be so, there is something wrong, and I quote the words of a well-known economist: "we may strongly suspect some oppression or abuse" to be the cause. Sir, the oppression is there, they have the monopoly and they find they can get the price they want or they think they can wait for the price. Under the existing conditions with the Rent Act no longer protecting the tenants, what is the condition in Calcutta? The people are so crowded together that ordinary family discipline and morality are very difficult to preserve. In some cases a whole family has to live in one or two rooms. I think that this state of things is not good, either for the community or for the State. We can well appreciate this Bill being circulated to public bodies. The Rent Bill was sent to the Bengal Chamber of Commerce and the Calcutta Corporation, and these two bodies said that there was no need for the Rent Act. The members of the Chamber of Commerce, composed as it is, opulent merchants, certainly paid a less rent than 10 per cent. of their income, and so they said it was all right. Well, Sir, go to the Calcutta Corporation which is composed of landlords with high notions of the rights of landlords and they will talk of sanctity of contracts and so on. What have they done to mitigate the evil? Have the employers of labour no obligation to the working class? Has the local body like the Calcutta Corporation no obligation to the ordinary ratepayers, to the poor men? I speak here on behalf of the wage-earners in Calcutta. The conditions are all right for the wealthy men. But these wealthy men forget their responsibility to those who work under them. Similarly, what have the Government and large employers like the joint-stock companies have done for these people? Have they raised the salaries of their men to make them commensurate with their house rents? Let them do so, and we shall be satisfied. If they think that the rent is high and that the whole

institution should be overhauled, let them find out the proper remedy. What we want is respectable and decent houses. The local authorities have their obligations. What has the Corporation done? It has prepared schemes of housing of labourers and its sub-committees had plenty of discussions. Has a single house been erected for the middle-class or even for the ordinary working class? If these people have not discharged their obligations, it is very easy now for them to say that conditions are all right. There is no doubt that something must be done and we hear of the rights of landlords and of the sanctity of contracts. There is absolutely no such thing as a right to do wrong. The landlord cannot demand from the tenant a rent which he cannot pay and he has got no right to ask the tenant to pay a high rent for a house which is not decent and respectable. There is no contract that can, by any stretch of imagination, be called sacred; it is oppressive, and from the figures given by the mover it is perfectly obvious that a large percentage of the contracts entered into by the landlords on the one hand and tenants on the other were oppressive, because it was found by a competent court of authority that they needed relief. Therefore, there is no use talking in the abstract about the sanctity of the contracts. Rights must be religiously respected wherever they exist, and it is the duty of the public authority to prevent and to punish injury and to protect every one in possession of his own. Still, when there is question of defending the rights of individuals the poor and helpless have a claim to special consideration. The richer class have many ways of shielding themselves and stand less in need of help from the State, whereas those who are badly off have no resources of their own to fall back upon and must chiefly depend upon the assistance of the State, and it is for this reason that wage-earners who are undoubtedly among the weak and necessitious should be especially cared for and protected by the Government. This latter part is a quotation from a document of considerable importance and I am absolutely sure that there is nobody who can deny this position. With these words, Sir, I recommend this resolution to the consideration of this House.

MINISTER in charge of DEPARTMENT of LOCAL SELF-GOVERNMENT (The Hon'ble Nawab Musharruf Hosain, Khan Bahadur): I propose at this stage to say a few words explaining the Government's attitude towards this resolution. The Calcutta Rent Act was never intended to find a permanent place on the Statute Book. It was meant to be a temporary expedient for dealing with an extraordinary situation. The preamble to the Act reads as follows:—

"Whereas it is expedient to restrict temporarily the increase of rents in Calcutta...."

and the Statement of Objects and Reasons attached to the Bill shows that the act was only intended to cope with a temporary emergency

due to the War, and that it was not intended to interfere permanently with the ordinary law of supply and demand. The Act was passed for three years only, and it was against the wishes of Government that it was extended for a further period of three years.

Now, Sir, it is nearly ten years since the War ended. It has left the world in many respects poorer and unhappier. People in general are worse off than if there had been no War. Nevertheless, except for an all-round reduction in purchasing power, economic conditions are no longer abnormal. The ordinary law of supply and demand is again in full operation.

If house-rents are high in Calcutta, this must be due to some deep-seated cause, such as the high cost of land in Calcutta. The Housing and Communications Committee of 1923 enumerated 16 causes which led to the cost of land in this city being excessively high. I recommend all those who are interested in the Calcutta housing problem to read that Committee's report and also the report of the Rents Committee which sat in 1920.

Babu JITENDRALAL BANNERJEE: May I ask if the Hon'ble Minister is familar with these valuable and interesting documents.

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: Yes. If the law of supply and demand is not allowed to operate freely and if house-rents are kept down by artificial means, the natural result must be to restrict building activities and to create a real scarcity of houses. If private enterprise fails to keep pace with the demand for accomodation, Government or the Corporation will have to step in and provide houses for the people. The Calcutta Improvement Trust made several experiments in providing houses for people who had been dispossessed by its operations. But the experiments met with little success. As a rule the houses were not taken up by the people for whom they were intended and the Trust is out of pocket as a result of this venture.

For these reasons, Government are extremely doubtful of the wisdom of attempting to legislate for a new Act on the lines of the Calcutta Rent Act of 1920. I shall, however, listen with interest to what members of the Council have to say on the subject—I have listened with great interest to the debate and I am quite willing to be guided by the opinion of the Council if any real cogent arguments are put forward in favour of this resolution.

My friend Mr. Jitendralal Bannerjee in the eloquent address he has delivered has given us some instance of oppression and ejectment by the landlord. The Calcutta Rent Act which was in operation for ten long years has ceased to exist and he said that as a result of the withdrawal of the Act there had been 662 ejectment cases instituted in 1927 and about 1928, I could not follow him.

Babu JITENDRALAL BANNERJEE: 363.

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: So far as the Rent Act is concerned, the Calcutta Rent Act as was enacted cannot meet the cases of hardship and oppression that have been mentioned. The Swaraj Party has also said that cases of oppression which are alleged to be made by house-owners were not also known to them and they did not come to the notice of Government as well. So, when the Swaraj Party or any private member next time brings in a Bill to put a stop to this sort of oppression, I can assure the House that Government will look at that with sympathy. I cannot commit myself any further, because the Government as a whole will have to be consulted. This much I can say that I accept the principle that the State cannot allow oppression to be perpetrated by one class of community on another.

My friend, Mr. Maguire, has enunciated the principle that the State is responsible for giving houses to the people at a reasonable rate of rent. I cannot accept that principle for the present, but I may say this much, as I have said, that the State is responsible for the safety of the people. Beyond this I am unable to say anything. I can tell my friend, Mr. J. L. Bannerjee, that I hold no brief for any landlord of Calcutta. I am as much a sufferer as he is. The Calcutta Improvement Trust has lately opened out a very large area in Calcutta and land has yet to be sold. If the rent law is enacted now restraining the imposition of rents beyond a certain rate, the danger is that the area of 7 sq. miles of land which the Trust is opening out and on which buildings will have to be erected, will be left practically without any houses. Although I agree with him in principle, I do at the same time say that, in the interests of the future development of Calcutta, we should be cautious in making any legislation restricting the imposition of rents. With these few words, I may assure the House that if any new Bill comes up before the House, it will receive the best consideration of Government along with various points raised by Messrs. Maguire and Campbell Forrester and others.

Mr. J. CAMPBELL FORRESTER: I rise on a point of information. I could not follow the Hon'ble Minister's remarks, it seemed that he was in one part of his speech agreeable to the landlords and in another against them. What position is he taking up?

Mr. SATISH CHANDRA SEN: Sir, I am sorry that I have to oppose the motion of my friend, Mr. J. L. Bannerjee, for whom I have the highest respect, but I think that in his anxiety to pose as a knight errant for the raiyats and tenants for whom he always speaks in this House, he has not given the same amount of consideration to

this matter as he gives to other matters. He wants the Rent Act to be continued or a new Act to be enforced. That means that he wants restrictions to be imposed on the free right of a citizen to contract for himself. Now, in the matter of restraint, he must prove to the satisfaction of the House that there is necessity for it and that there are causes which justify his motion. Now, he has given us figures. He has stated that during the 7 years the Rent Act was in force 56,000 cases were instituted and were given relief or in other words 8,000 persons were given relief every year. He says in the next breath that there are 6,000 houses in Calcutta for letting purposes. I do not know how 56,000 persons live in 6,000 houses. Of these 56,000 who were relieved, 600 persons had suits instituted against them in the Small Cause Court after the Rent Act had been over. Now, if 56,000 persons had to seek the relief of the Court and of them only 600 were dissatisfied with the demands of the landlords, is that a reason, cogent or proper, to suppose that the landlords are oppressive. Of these 600 cases, we do not know how many of them were for default of payment of rent, and how many of them were for default of other duties cast upon the tenants. Mr. Bannerjee, in his desire to have the Rent Act enforced, has not given us any idea as to the character of these cases—whether they were all for increase of rent—the tenant not having agreed to it, suits had to be instituted, or whether they were for default of payment of rent, in consequence of which the landlords had to run into the court for relief. Under these circumstances, I say that no case has been made out by Mr. Bannerjee for the promulgation or the enactment of a new Rent Act. Moreover, it has to be considered whether these tenants cannot get proper accommodation at reasonable prices. Only two cases have been cited by Mr. Bannerjee out of the 56,000 tenants who got relief during the period that the Rent Act was in force. During the time the Rent Act was in force, if Mr. Bannerjee had cared to see the *Statesman* of any Sunday, he would have found that advertisements for houses then for letting purposes were practically nil. Now, the advertisements cover from 6 to 7 columns of every Sunday issue. That shows that more houses are vacant now than there are tenants. That is also the case in the northern part of the town. I know from personal experience that the rent the landlords used to get during the period of the Rent Act they cannot get now. Under these circumstances, I oppose the motion.

Mr. A. K. FAZL-UL HUQ: Sir, I support the resolution of my friend, Mr. J. L. Bannerjee, as a protest against landlordism which was at one time rampant in Calcutta and whose evil effects have not entirely died out from our midst. I can understand the attitude taken up by Government which is always slow to appreciate, and slower still to find a remedy. But I confess I cannot understand the

attitude taken up by the members of the Congress Party in this Council who confess that there is room for a remedy, but would like us to wait for a better time for legislation to come. Sir, the position is a very simple one.....

Dr. BIDHAN CHANDRA ROY: May I rise on a point of personal explanation? What I said was that an enquiry should be made in order to find out whether any protection was necessary.

1 p. m.

Mr. A. K. FAZL-UL HUQ: Sir, the position seems to be this: either there is room for legislation or there is not. If once it is conceded that some steps should be taken for the purpose of controlling rents, I do not see any logic in suggesting the postponement of even a temporary measure and thereby causing the agonies of tenants to be protracted, on the plea that Government should bring forward a comprehensive legislation later on. It is all very well to talk of comprehensive legislation, but we do not know when that comprehensive legislation will come. Therefore, Sir, in order to fill up the intervening period, I think that some sort of rent control should be introduced, and I consider that Mr. Bannerjee's proposal is a very modest one.

Mr. P. C. BASU: Mr. President, Sir, I oppose the resolution moved by the member from Birbhum. And in doing so, I say that I have not the gift of oratory like him, nor the choice of his expression, nor his facility in the use of superlatives, but I shall frankly tell you what I feel in this matter. We all know that the Rent Act was a War measure, and that after the War it continued for some time with the help of our Party, because it was considered at the time that there was a dearth of houses in Calcutta. But since then there have sprung up a large number of houses in Calcutta and in the suburbs. Mr. Bannerjee has not been able to make out any case of oppression of tenants by landlords, and of a tenant being unable to get another house in substitution of his old one. Mr. Bannerjee has spoken of the law of supply and demand as belonging to the kindergarten system of economic law. The ground Mr. Bannerjee has urged is that land cannot be produced. But I submit that houses are vital things, and they can be produced and, as a matter of fact, are actually produced every day. He forgot that the law of supply and demand does not apply to land but to houses. And unless the landlord has an incentive in the shape of good rents, he is not going to build them. What interest has he in building houses? At the present moment, a landlord cannot expect to get more than 4 per cent. on his capital outlay.

Khan Bahadur Maulvi AZIZUL HAQUE: It is quite enough.

Mr. P. C. BASU: Sir, Mr. Bannerjee has also referred to State intervention. I quite agree with him that State intervention is necessary, but not in the matter of fixing rents through the machinery of a Rent Act. The State should come forward and build houses as in London and other parts of the world in order to help in the housing of the poor. It is only here that there is scope for State intervention. Mr. Bannerjee probably wants State intervention in the matter of housing and not in the matter of rent control. Mr. Bannerjee has also quoted figures about suits instituted in the courts. He has not given us the number of suits instituted during the currency of the Rent Act. I challenge him to produce statistics for the period the Rent Act was in operation. If the statistics are produced, I can show that the number of ejectment suits during the period of the Rent Act was greater than it was after that period. This I say from my own small experience in the High Court.

Sir, with these few words I beg to oppose this resolution.

Babu JITENDRALAL BANNERJEE: Sir, my friend Mr. P. C. Basu—I hope he will permit me to describe him as my friend even now, notwithstanding his difference on this particular question—has complained of my fondness for superlatives. But, Sir, so far as this discussion is concerned, I have kept clear of superlatives as far as possible; and I only wish that my friend had extended to the poor tenants a little of the superlative compassion that he feels for the landlords.

Sir, the Hon'ble Minister quoted the precedent of the Congress Party. I should like to know whether he would be willing to follow this precedent everywhere. If he could give me an assurance to that effect, I should withdraw not only this particular resolution but every blessed resolution that stands against my name.

Sir, the Hon'ble Minister referred again to the law of supply and demand. We could have learnt more about this law from any ordinary text-book than from his learned, luminous and most interesting discourse. Instead of referring me to the law of supply and demand, it would have been more helpful if he had referred to some of the figures that I gave and had indicated what remedy, what redress, the Government was going to provide for the poor tenants. Of course, so far as the other members of the House are concerned, they can speak without any sense of awkward and burdensome responsibility. But when the Hon'ble Minister talks of the law of supply and demand, I ask what redress—what remedy—are the Government going to give? What has he to say about my figures—about the 6,000 standardisation cases, and the 50,000 deposit cases? And the 600 eviction cases per year? I find the Hon'ble Minister has ignored these considerations very conveniently.

Sir, so far as Mr. S. C. Sen is concerned, I have just one question to ask of him. If the landlord, according to him, is not unreasonable or rapacious, why is he afraid of the Rent Act? After all, the Rent Act will provide us with a machinery for fixing a fair and equitable rent, and even then the decisions of the Rent Court may be appealed against. Sir, I cannot understand for the life of me why a lawyer like him, familiar with all these facts, should be afraid of the Rent Act. The mere fact that he and his friends are so afraid—are so nervous—shows that there is something very rotten as regards Calcutta landlords. They dare not face an investigation such as the Rent Court will introduce.

Sir, so far as Dr. Bidhan Chandra Roy is concerned, I have to thank him for the very moderate opposition that he offered. In fact, I don't perceive what the difference is between his viewpoint and mine. He said that a good deal of investigation was necessary before legislation could be undertaken. But my resolution is very modest. It asks Government to take steps for necessary legislation. This cannot be done in a day, a week, or a month; some time is surely to elapse; and during that time, my friend with all the resources of his Party at command, may institute whatever investigation he likes. If, therefore, his opposition were a bona fide opposition, he ought to have conceded that there was room for investigation under my resolution also. As the avowed champions of the poor and the distressed it is his duty and the duty of his Party to support me in this matter and not oppose it, even in the tentative and half-hearted manner that he has done.

Sir, with your permission I should like to point out—and I do so with all possible respect—one fundamental point of inconsistency in the attitude of my friends to the left. They are—they must be if they are true to the principles of the Congress—against the tyranny of organised capitalism. And if there is sincerity in their indignation against this tyranny, I do not understand why the flame of their righteous wrath should not burn equally fiercely against the organised capitalism of the landed aristocracy of this country. I do not understand why they stop short only here and nowhere else, and I should like to have a clear and definite answer from them.

Dr. BIDHAN CHANDRA ROY: On a point of personal explanation, Sir. The position which my Party has taken up has reference only to the first portion of the resolution which asks the Government to take immediate steps to revive the Rent Act of 1920, and it is to that portion that my Party objects.

Babu JITENDRALAL BANNERJEE: If my friends have no objection to the second part of the resolution, I shall withdraw the

first part at once. I should like to know whether they would be prepared to support me in that case.

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, my friend Mr. Jitendralal Bannerjee said that I was silent on many of the.....

Babu JITENDRALAL BANNERJEE: On a point of order, Sir. The Hon'ble Minister can rise on a point of personal explanation or a point of order, but he cannot deliver a second speech.

Mr. D. N. ROY: A Member of Government can always reply last even if he has already spoken.

Mr. DEPUTY PRESIDENT (Khan Bahadur Maulvi Emaduddin Ahmed): I would draw the attention of Mr. Bannerjee to section 41(3) of the Rules and Standing Orders, which reads as follows:—

"A member who has moved a substantive motion may speak again by way of reply, and if the motion is moved by a non-official member, the member of the Government to whose Department the matter relates shall have the right of speaking after the mover, whether he has previously spoken in the debate or not."

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: My friend in his speech has attacked me by saying that I did not refer to some of the figures which he placed before the House. A gentleman on the left took note of those figures and explained to the House how the figures stood. So, I believe that I am not required to give any reply about those figures.

Then, I have told the House that so far as the Government is concerned, it is not prepared to accept this resolution in this way, but if any private Bill is introduced, I may say that Government will keep its mind open, and will see that justice is done. So, after this statement of mine, I trust that my friend will not press his resolution to the vote.

The motion of Babu Jitendralal Bannerjee was then put and a division taken with the following result:—

AYES.

Atzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Nawsher.
Bannerjee, Babu Jitendralal.
Chaudhuri, Maulvi Nurul Huq.
Choudhury, Maulvi Khorshed Alam.
Forrester, Mr. J. Campbell.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Khan Bahadur Maulvi Syed Maqbul.
Ismail, Khan Bahadur Maulvi Muhammad.
Karim, Maulvi Abdul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamiruddin.
Maguire, Mr. L. T.
McCluskie, Mr. E. T.
Rahim, Sir Abd-ur-
Rahman, Maulvi Azizur.
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.

NOES.

Acharjya Choudhuri, Maharaja Shashi Kanta.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Premotha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Blair, Mr. J. N.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakrabortty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Choudhuri, Rai Harendranath.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Dee Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Himatsingka, Babu Prabha Dayal.
Hopkyns, Mr. W. S.
Hossain, the Hon'ble Nawab Musharruf Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjee, Srijut Taraknath.
Momin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Naskar, Babu Hem Chandra.
Nazimuddin, Mr. Khwaja.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Nanjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. N. H.
Roy, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sashee, Mr. F. A.
Sarkar, Babu Nalinranjan.
Sarkar, Rai Sahib Rohati Mohan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Shah, Mr. Gholam Hossain.
Stapleton, Mr. H. E.

The Ayes being 24 and the Noes 55, the motion was lost.

Adjournment.

The Council was then adjourned till 2-45 p.m., on Monday, the 20th August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Monday, the 20th August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (RAJA MANMATHA NATH RAY CHAUDHURI, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, Minister, and 109 nominated and elected members.

OATH.

The following gentleman took an oath of his allegiance to the Crown:—

Mr. G. P. Hogg.

Starred Questions

(to which oral answers were given).

Court-fees realised from suits or proceedings in the Original Side of the High Court.

*81. **Maulvi NURUL HUQ CHAUDHURI:** Will the Hon'ble Member in charge of the Judicial Department be pleased to state—

(a) the amount or value of court-fees realised from suits or proceedings in the Original Side of the High Court and in appeals therefrom in each of the last 5 years; and

(b) what has been the loss to the Provincial Government for that period on account of the exemption of the suits and proceedings in the Original Side of the High Court and in appeals therefrom from the operation of the Assam and Bengal Court-fees (Amendment) Act of 1922?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (a) A statement is laid on the table.

(b) The figures required for an answer to this question are not available.

Statement referred to in the reply to clause (a) of starred question No. 61 showing the court-fees realised in the Original Side of the High Court.

Year.	Fees realised by means of stamp.		Probate and Administration Duty.		Total.	
	Rs.	A.	Rs.	A.	Rs.	A.
1923	10,23,941	9	13,66,659	4	23,90,600	13
1924	8,63,396	14	12,68,838	8	21,32,235	8
1925	6,72,259	4	21,95,445	12	28,67,705	0
1926	7,48,108	10	11,05,627	8	18,53,736	2
1927	6,92,539	7	14,03,904	0	20,96,443	7

Maulvi NURUL HUQ CHAUDHURI: Will the Hon'ble Member be pleased to state what is the rule of assessment of court-fees in the Original Side of the High Court?

The Hon'ble Mr. W. D. R. PRENTICE: I require notice.

Maulvi NURUL HUQ CHAUDHURI: Is the Hon'ble Member aware that the rule is different in the mufassal courts?

The Hon'ble Mr. W. D. R. PRENTICE: Yes.

Maulvi NURUL HUQ CHAUDHURI: Will the Hon'ble Member be pleased to say where the difference lies?

The Hon'ble Mr. W. D. R. PRENTICE: I am not expert enough to answer this question without notice.

Rural water-supply in the Burdwan district.

*62. **Mr. P. C. BASU:** (a) Has the attention of the Hon'ble Minister in charge of Department of Local Self-Government been drawn to the scarcity of drinking water in the area affected by distress in the district of Burdwan?

(b) If so, will the Hon'ble Minister be pleased to lay on the table a statement showing for the last two years the number of—

(i) tube wells,

(ii) wells, and

(iii) tanks

sanctioned or executed by the District Board of Burdwan in the affected areas with the names of villages?

SECRETARY to the GOVERNMENT of BENGAL, DEPARTMENT of LOCAL SELF-GOVERNMENT (Mr. R. N. Reid): (a) Yes.

(b) A statement is laid on the library table.

Maulvi ABUL KASEM: Will the Hon'ble Minister be pleased to say if any action in this direction has been taken by the District Board of Burdwan under the Sanitary and Agriculture Improvement Act (Act VI of 1920)?

Mr. R. N. REID: I ask for notice of that question.

Jute and tea cesses.

*63. **Maulvi NURUL HUQ CHAUDHURI:** Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state—

(*i*) the amount of jute and tea cesses collected each year since the imposition of these cesses; and

(*ii*) the use to which the jute and the tea cesses respectively have been put?

Mr. R. N. REID: (*i*) and (*ii*) The local Government have nothing to do with the tea cess, and have no information about it. A statement is laid on the table showing the amount of jute cess collected in each year since the cess was first levied. The proceeds are spend on the improvement and expansion of Calcutta.

Statement referred to in the reply to starred question No. 63 showing the duty on jute levied for the Calcutta Improvement Trust.

Year.		Amount.
		Rs.
1911-12	...	Nil*
1912-13	...	8,31,412
1913-14	...	10,95,429
1914-15	...	7,89,961
1915-16	...	10,57,337
1916-17	...	10,11,332
1917-18	...	7,83,470
1918-19	...	8,15,140
1919-20	...	8,72,433
1920-21	...	9,71,999
1921-22	...	7,76,261
1922-23	...	9,45,654
1923-24	...	9,73,718
1924-25	...	10,91,317
1925-26	...	11,16,675
1926-27	...	10,84,736

* The Act was brought into force from 2nd January, 1912.

Ferry service between Noakhali, Sandwip and Hatia.

*84. **Maulvi NURUL HUQ CHAUDHURI:** (a) Will the Hon'ble Member in charge of the Marine Department be pleased to state whether it is a fact that during the last four years there had been a series of accidents resulting in serious loss of life to the ferry boats plying between Noakhali, Sandwip and Hatia?

(b) If so, are the Government considering the desirability of taking steps for a direct steamer service between Noakhali and the Islands?

(c) Do the Government propose to appoint sanitary inspectors at the embarkation ports of Goalundo, Narayanganj and Chandpur to prevent overcrowding and enforce proper arrangements for the safety and sanitation of inter and third class passengers?

MEMBER in charge of DEPARTMENT of MARINE (the Hon'ble Mr. Marr): (a) The member is referred to the reply given to unstarred question No. 41 of 10th February, 1928.

(b) No.

(c) No. Sanitary inspectors have no powers to prevent overcrowding. As regards sanitary precautions, Narayanganj and Chandpur are municipalities, and are required to employ sanitary inspectors. Goalundo is under the jurisdiction of the Faridpur District Board. One of the duties of rural sanitary inspectors is to inspect the sanitary arrangements of steamer ghats. It is understood that the District Board has taken certain action with a view to safeguarding the health of passengers.

Maulvi NURUL HUQ CHAUDHURI: Will the Hon'ble Member be pleased to state whose duty it is to prevent overcrowding on the steamers?

The Hon'ble Mr. A. MARR: The survey certificate of a steamer prescribes the number of passengers which a steamer is allowed to carry in each of the different classes.

Maulvi NURUL HUQ CHAUDHURI: Will the Hon'ble Member be pleased to state if there is any constituted authority who is entitled to prevent overcrowding in the steamers?

The Hon'ble Mr. A. MARR: The District Magistrate or the Subdivisional Officer of the locality.

Maulvi NURUL HUQ CHAUDHURI: Is the Hon'ble Member aware of any machinery for bringing to the notice of the District Magistrate or a similar authority when there is any overcrowding on the steamer on any particular day?

The Hon'ble Mr. A. MARR: There is no special machinery.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state if there is any Government officer who is entrusted with the duty of seeing that there is no overcrowding on the steamers?

The Hon'ble Mr. A. MARR: No particular Government officer.

Unstarred Questions

(answers to which were laid on the table).

Police Barracks at Bogra.

50. Khan Bahadur Maulvi HAFIZUR RAHMAN CHAUDHURI: (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to state whether the Government have purchased a plot of land for the Police Barracks at Bogra at a place far away from the town, from the Government Treasury and from the Government Magazine, and in a mulberry land?

(*b*) Is the Hon'ble Member aware that there is a place known as Bogra Tannery with well constructed two storied buildings with some quarters which might with additions be suitably utilised as Police Barracks at a less cost?

(*c*) Will the Hon'ble Member be pleased to state—

(*i*) the distance of the Tannery from the town, the Government Treasury and the Government Magazine; and

(*ii*) the distance of the selected site from the said Government premises?

(*d*) Will the Hon'ble Member be pleased to state what is the approximate cost of the new site together with the probable cost of the erection of new Barracks, etc., thereon?

(*e*) Have the Government worked out any cost as to the utilisation of the Tannery for the purpose? If so, what is the cost?

(*f*) Will the Hon'ble Member be pleased to state the reasons for not purchasing the Tannery with its several buildings therein?

MEMBER in charge of POLICE DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (*a*) Government have acquired for the purpose

stated a piece of land which is about one mile and three-fifths from the post office and about one mile and seven furlongs from the Treasury and Magazine. The land is high, there were no homesteads on it and it was almost entirely uncultivated.

(*b*) Government were advised that the lay-out of the additional buildings required would not be easy, that the tannery buildings would require considerable adaptation and would not even then be entirely satisfactory and that it would be necessary to make and maintain a *pucca* road from the town.

(*c*) (*i*) From the town one mile and one-fifth, from the Treasury and Magazine one mile and three furlongs.

(*ii*) *Vide* answer to (*a*).

(*d*) Rs. 2,53,000.

(*e*) The cost was roughly estimated at Rs. 2,43,000.

(*f*) *Vide* answer to (*b*).

Plying of motor-buses on the Grand Trunk Road.

31. Babu AMULYA CHANDRA DATTA: (*a*) Will the Hon'ble Minister in charge of Department of Local Self-Government be pleased to state—

(*i*) how many licensed or registered motor-buses ply on the Grand Trunk Road between Chinsurah and Howrah or the intermediate stations;

(*ii*) whether Government propose to take any, and if so, what steps to improve the condition of the said road;

(*iii*) whether the local bodies are given any portion of the amounts charged and levied by way of license or registration fees for motor-cars and buses to enable them to recoup the damage done to their roads by these vehicles and to keep them in proper order?

(*b*) If there be no legal authority for the crediting of money realised for fees to the local bodies, are the Government considering the desirability of introducing legislation to secure this end?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: (*a*) (*i*) Thirty-three.

(*ii*) Government are improving the surface and alignment of the road year by year as funds become available for the purpose.

(*iii*) No.

(*b*) Government are not contemplating any action at present but are waiting to see what action the Government of India take on the report of their Road Development Committee.

Compensation to sufferers during communal riot at Pabna.

52. Srijut JOGENDRA NATH MOITRA: (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to state whether the amount apportioned as compensation to the Hindu sufferers of Pabna during the last communal riot has been paid to them in full?

(*b*) What was the total amount assigned to the Hindus and how much has actually been paid up till June last?

(*c*) Will the Hon'ble Member be pleased to state what portion of the total amount has been realised from the Hindus and what portion of the compensation has been realised from the Muhammadans up to June last?

(*d*) Will the Hon'ble Member be pleased to state what, if any, is the unrealised amount?

(*e*) Will the Hon'ble Member be pleased to state which party—Hindus or Muhammadans—has been the defaulter and to what extent?

(*f*) How do the Government propose to recoup the amount?

The Hon'ble Mr. W. D. R. PRENTICE: (*a*) Yes, except to seven people who have not appeared to receive the amount due to them and to twelve people who died before payment was begun. Endeavours are being made to trace their heirs.

(*b*) Rs. 59,218. No payment was made before 1st July, 1928, and the amount paid up to 10th August was Rs. 53,213-10.

(*c*) From Hindus Rs. 24,139 and from Muhammadans Rs. 35,099-4. There was an excess realisation of Rs. 20-4.

(*d*) Nothing now remains to be realised.

(*e*) and (*f*) 2·95 per cent. of the demand due from the Hindus and 2·88 per cent. of the demand due from the Muhammadans could not be collected. With the sanction of the Commissioner, some of the awards were revised and the payments were adjusted in accordance with the collections and the proceedings closed save for the payments referred to in (*a*).

Discharge of filth into Bantolla canal.

53. Mr. A. F. M. ABDUR-RAHMAN: (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state whether he is aware that the Calcutta Corporation lets out filthy sewerage discharges of Calcutta into the Bantolla canal?

(*b*) Is it a fact that the inhabitants of villages, *viz.*, Boalbari, Kalarkhal, Uchhapota, Kharki, Chaubagha, Chamurati, etc., by the

sides of the said canal have submitted a petition to the District Magistrate, 24-Parganas, complaining of ill-health of the villagers owing to the insanitary condition of the Bantolla canal due to the discharge of filth into the canal by the Corporation authorities?

(c) If the answer to (b) is in the affirmative, will the Hon'ble Minister be pleased to state what steps, if any, have the Government taken in this matter?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: (a) Yes.

(b) Yes.

(c) Government have hitherto taken no action as the complaint was not brought to their notice before. A copy of the question and answer and of the report received from the District Magistrate, 24-Parganas, will be sent to the Corporation for necessary action.

Settlement operations in Birbhum and Murshidabad.

54. Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: (a) Will the Hon'ble Member in charge of Department of Revenue be pleased to state the rate at which the cost of the settlement operation in the districts of Murshidabad and Birbhum is realised or will be realised?

(b) Is the Hon'ble Member aware that in the settlement in the province of Bihar, the landlords, as a rule, get a whole set of papers of an entire *mauza* of which they are the proprietors by paying the settlement cost of their shares?

(c) Is the Hon'ble Member also aware that in the present settlement operations in the districts of Murshidabad and Birbhum, the zamindars get only those *khatians* which are directly under them?

(d) Is the Hon'ble Member aware that the zamindars have to pay extra cost for the complete set of papers for the *mauza* concerned which they are entitled to get following the Bihar principle?

(e) Will the Hon'ble Member be pleased to say why there is such a discrepancy?

(f) Will the Hon'ble Member be pleased to state whether the settlement proceedings will be taken up in the municipal area in the districts of Murshidabad and Birbhum where the Bengal Tenancy Act is not in application and where the survey has been finished?

(g) Will the Hon'ble Member be pleased to lay on the table a statement showing—

(i) how much money has been spent up to this time in the settlement operations in the districts of Murshidabad and Birbhum;

(ii) how much money will be required to finish the operations; and

(iii) how much cost roughly will be realised from (a) the zamindars, and (b) from the tenants and others?

MEMBER in charge of DEPARTMENT of REVENUE (the Hon'ble Sir Provash Chunder Mitter): (a) Recovery of cost of survey and settle- in the districts of Murshidabad and Birbhum is being made at the following rates per acre:—

(i) Police-stations Sagardighi, Jiaganj, Murshidabad, Berhampore, Raninagar, Beldanga, Hariharpura and portions of police-stations Damkol and Noada in the district of Murshidabad, Re. 1-7.

(ii) Police-stations Muraroi, Nalhati, Rampurhat, Mayureswar, Labhpur and Nanoor in the district of Birbhum and police-stations Nabagram, Kandi, Bharatpur, Burwan, Khargram, Shamsherganj, Suti, Raghunathganj, Lalgola, Bhagawangola, Mirzapur and portions of police-stations Damkol and Noada in the district of Murshidabad, Re. 1-8.

2. The rates for other areas have not been settled yet.

(b) No.

(c) Yes, and also their own *khatians*.

(d) Yes, but when *khatians* for entire villages are wanted, concession rates are allowed.

(e) As Government are not aware of the Bihar rule, the question does not arise.

(f) The Bengal Tenancy Act applies to the municipal areas in the districts of Murshidabad and Birbhum and a record-of-rights is being prepared for those areas.

(g) A statement is laid on the table.

Statement referred to in the reply to clause (g) of unstarred question No. 54.

(g) (i) Rs. 31,90,126.

(ii) This is estimated at Rs. 7,00, 000.

(iii) Of the net cost, *i.e.*, of the total cost excluding the receipts, landlords of all grades and raiyats including occupants will pay three-fourths. As the settlement operations have not been completed yet, the actual amount payable by landlords or zamindars and raiyats cannot be ascertained.

Police help for realisation of municipal taxes.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: (*a*) Will the Hon'ble Minister in charge of the Local Self Government Department be pleased to lay on the table a statemen showing the number of cases in the course of the last five years in whicl the municipal servants have failed to serve warrants against defaultin rate-payers?

(*b*) Are the Government considering the desirability of takin necessary measures or giving more power to the municipal authoritie to protect their officers and servants when going to realise taxes?

(*c*) Are the Government contemplating securing police help on such occasions for the municipal authorities?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: (*a*) To compile such a statement would involve an amount of work incommensurate with the importance of the subject.

(*b*) No.

(*c*) To give assistance in the realisation of municipal taxes is not one of the normal duties of the police and Government do not propose to issue any special orders on the subject. In exceptional circumstances it is always open to the municipal authorities to apply to the District or Subdivisional Magistrate for police help; but it is in the Magistrate's discretion to grant or withhold such assistance.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

The Hon'ble the President then called upon Maulvi Nurul Huq Chaudhuri to move his amendment No. 764.

Maulvi NURUL HUQ CHAUDHURI: I protest against the way in which an attempt has been made to foist upon me an amendment which I never sent. This is an anti-tenant amendment and I certainly did not send it. Whoever else might be responsible for it I am not.

The following amendment was therefore not moved:—

"That after clause 23 the following clause shall be inserted, namely:—

'23A. The following sections of the said Act are repealed, namely, sections 36 and 38.'"

Khan Bahadur Maulvi AIZIZUL HAQUE: In this connection may I rise on a point of order. While I gave a notice of an amendment referring to section 30 which is now open for amendment, I also gave notice of an amendment to the effect that a certain clause of this section should be deleted. I gave notice of another amendment to the effect that certain words may be added. I understand that this has been disallowed. I want your ruling whether I am entitled to give notice of any amendment to amend the provision of this section.

Mr. PRESIDENT: It is not possible for me, just at the present moment, to say how the matter stands. I propose to make an enquiry.

Khan Bahadur Maulvi AZIZUL HAQUE: I will see you in your Chamber regarding this.

I beg to move that in clause 24, line 2, the words "or partly" shall be omitted. Section 30 provides for the enhancement of rent by suit. I find that the increment of productive power of land when increased by improvement of the landlord and which is one of the basis of enhancement is being added to by a further clause "or wholly or partly." The former section was "that the productive power of land held by a raiyat has to be increased by an improvement effected entirely at the expense of the landlord." The history of landlords is not necessary for me to dilate upon. I will quote from the Settlement Report of my district—the district of Nadia—where instead of any improvement being made, one landlord chose to make improvement, which he never did, a plea for increasing rent all round. I do not see any justification as to why to this clause should be added the words "wholly or partly." It will inevitably bring in a certain amount of complication where the improvement is made partly at the expense of the landlord, say, at a cost of Rs. 100. It opens up a gate of litigation. The District Board might co-operate with the tenants; they may join together and the landlords may also partly contribute to a scheme of improvement. There is no reason why simply because a landlord has made a part contribution for the improvement of an area it should be the basis of any increment of rent. I therefore move that this clause which is wholly reactionary be omitted. Government have not chosen to give any reason as to why it is necessary. Defects have been found in the present law. So in place of that Government are now making an addition to it which will be very disastrous for the tenants. With these words I move my amendment.

Mr. F. A. SACHSE: The words to which the mover of this amendment refers are put in order to encourage landlords not to oppose schemes promoted by the District Boards under Act VI of 1920 for local drainage or irrigation works. As the law stands the landlords

can get no increase of rent as a reward for contributions to which they may have been assessed by the Collector for such schemes. Hence they put obstacles in the way of these schemes being carried through. I do not think many landlords will find it worth while to bring suits for enhancement of rents on the ground allowed in this section. I consider that the reasons put forward for the addition of these words and the motive for the amendment are to an equal extent on the sentimental side. I oppose the amendment.

Babu AMARENDRA NATH GHOSE: spoke in Bengali; the English translation of which is as follows:—

"Mr. President, I oppose the amendment on the same ground on which Khan Bahadur has supported it, i.e., for the benefit of the tenants, and not for the benefit of the landlord.

The amendment means that if a landlord effects part-improvement to any land he will not be entitled to enhancement of rent. By this amendment we take it for granted that landlord and tenant cannot jointly work for the improvement of the land. Its evil effect is apparent. Take for instance a case: An embankment has to be erected to improve the productive power of 10,000 bighas of land. Tenants are generally unable to collect money and materials for this purpose. Landlords also alone can't do that unless the tenants can partly help by their manual labour. If such part-contribution by landlord does not entitle him to the enhancement of rent he will naturally be unwilling to come forward to help the tenant with money and materials. A landlord is after all a man who generally looks after his own interest. Very few persons work disinterestedly in a religious spirit. We are not concerned with them here. Landlord would see if the money he invests would bring him something. If not, he is sure not to invest money in an unprofitable bargain. Even animals and birds, not to speak of man, care for their interests—a bird for instance would not fly to a fruitless tree. I apprehend that this amendment if carried would do positive harm to tenants, hence I oppose."

Maulvi ABUL KASEM: There is a great deal of force in what has fallen from the lips of my friend on the left, but I am afraid I have still to support the mover of this amendment because I am told that if there is an improvement in the productive power of land by any action taken under the Bengal Village Agriculture and Sanitary Improvement Act then it will be, according to the terms of this section, an improvement in productive power of the land to which the zamindar has partly contributed and that part contribution of his will entitle him to enhance the rent. But that improvement will be secured at the expense not only of the zamindars but also of the tenants and other

parties concerned for which they will have to pay taxes to meet the recurring expenditure. Therefore, I think the words "or partly" should be deleted or made more explicit. The words ought to be that the zamindars will be able to claim enhancement of rent only in such cases in which they contribute substantially.

Khan Bahadur Maulvi AZIZUL HAQUE: May I ask the Hon'ble Member if it is not a fact that the Agriculture and Sanitary Drainage Act has been an entire failure? I may state that there is not a single scheme under the Sanitary Drainage Act except the Malda scheme which has also proved to be a failure.

Mr. F. A. SACHSE: I admit that hardly any scheme has gone through. It is not for the Revenue Department to say why, but I think one of the reasons is that zamindars do not want to contribute because they know that they cannot get any enhancement of rent as a result of the improvement.

Khan Bahadur Maulvi AZIZUL HAQUE: Is not the procedure defective?

The motion of Khan Bahadur Maulvi Azizul Haque was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Atiqullah, Mr. Syed Md.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
Hussain, Maulvi Latafat.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjea, Babu Promotha Nath.
Banerjee, Mr. A. C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
James, Mr. F. E.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakanath.
Momin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.

Nelson, Mr. W. H.
Peddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Saahna, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Nalinaranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. N. E.
Wordsworth, Mr. W. O.

The Ayes being 18 and the Noes 53 the motion was lost.

The following amendment was called but not moved :—

Mr. SYED MD. ATIQULLAH to move that for clause 25 substitute the following, namely :—

"25, Section 36 of the Said Act is repealed."

Khan Bahadur Maulvi EKRAMUL HUQ: I understand that among the many amendments which require the previous sanction of the Governor-General this is the first amendment that is going to be discussed on the floor of the House. I wish that along with that sanction a further sanction was obtained from His Excellency the Viceroy to the effect that the hon'ble members of Government should not be tied to the leading string of the Hon'ble Member in charge of the Revenue Department in the matter of casting their votes in the Council. Sir, the amendment which I propose runs thus :

"That in clause 25 for the proposed section 36 the following shall be substituted, namely :—

'36. When a court passes a decree for enhancement the court shall think that immediate enforcement of the decree would produce hardship to the raiyat, and it shall direct that the enhancement do take effect from after the 15th year (fifteenth year) of the passing of the decree and the amount of enhancement decreed to be divided into 15 equal parts and to be spread over to another 15 years reaching the maximum after the 30th year from the passing of the decree; and the full rent shall be deemed to have come into force from the year when the maximum rent is reached.' "

3-15 p.m.

I quite realise that my amendment on the face of it does not seem to be acceptable to the House but I would like to point out that according to the rules relating to amendment it was not possible for those who want to do away with the section regarding the enhancement of rent, to send in an amendment to the effect that section 30 of the Bengal Tenancy Act be expunged from the Statute Book. As this section has not been touched by the Select Committee nor by Government, it is left to us in a round-about way to find out a means by which

we can give some relief to the tenantry by lessening the rigour of the section on enactment. If a reference is made to section 30 the House will find that one of the reasons which enables a landlord to enhance the rent previously paid by tenants is the ground that it was lower than the prevailing rate. So far as this matter is concerned, is it not a matter of pity that it did not strike the Select Committee that such a Statute operated harshly against the tenants, and did not conduce at all to their interests. We ought to realise, Sir, that about a hundred years ago the rent per bigha which the raiyats paid to their landlords was as low as annas two sometimes: but after 15 years it rose to 4 annas and it has gone on like this till the prevailing rate has been Re. 1 or Rs. 2 or even more, though it was much less in the beginning. If a proposition of this nature is allowed to remain on the Statute Book, the prevailing rate will rise and rise and while enriching the landlords at every turn will impoverish the agriculturists.

Mr. F. A. SACHSE: I rise on a point of order, Sir. Is the member relevant in discussing in this amendment the grounds for the enhancement of rent which is dealt with in section 307? We are now discussing section 36 which simply states the time during which the court may direct that the enhanced rent should be paid.

Mr. PRESIDENT: If I remember aright, the mover in his preliminary remarks stated that, as section 30 was not touched either by the Select Committee or the Government, he would make some observations with regard to that section to justify the amendment tabled by him. Having regard to that, I think I should not rule him out of order at this stage; but I hope he will be able to maintain his point and be brief so far as section 30 is concerned.

Khan Bahadur Maulvi EKRAMUL HUQ: That was exactly the reason why I was referring to this particular question. If we leave the question of the prevailing rate aside, there are other propositions equally absurd and which would operate to the detriment of the peasantry, and it is high time that Government and this House should see that these are not placed on the Statute Book.

Take the case of the average local prices of staple food-crops: Is it not a fact that by the rise in prices of staple food-crops there is rise in price of other materials also and the land will not be yielding the same quantity of paddy that it used to do before? Further is it not a fact that the rise in prices of other articles of food and other necessaries of life will operate very heavily on the tenants who are already unable to make both ends meet? Was it not right and proper for the members of Government and the Select Committee to have looked at this question from this point of view and set their foot on such a proposition and allowed the tenants greater relief by deleting such a clause from the book?

God is kind to some tenants, and ordains that a river changes its course to the benefit of these tenants or there is regular flood and deposit of silt somewhere. It is absurd, nay foolish, to enact that the landlord should make this a ground for enhancement of the tenants' rent. What does this show? It simply shows that you desire to help not the tenantry but the zamindars at every turn. But, Sir, that is not the attitude that a Government should take. As I have already told the House, I was not entitled to ask that all these clauses should not remain on the Statute Book and that is why I attacked the section in a round-about way by asking the House to lengthen the period of enhancement to such an extent that a zamindar would never think of instituting a suit for enhancement, and thus the section of enhancement, section 30, Bengal Tenancy Act, will remain a dead letter for ever.

Mr. W. H. NELSON: Sir, on the very admission that he makes that he wishes to amend the sections which are not open to amendment, Sir, the whole amendment should be ruled out. He admits, Sir, that he intends to amend two sections which are not open to amendment.

Mr. PRESIDENT: The Khan Bahadur has been extremly frank and out spoken; but the whole question is highly technical and the amendment cannot be ruled out of order only because he has expored the motive behind it.

Khan Bahadur Maulvi EKRAMUL HUQ: I trust, Sir, that the Hon'ble Members of Government would not, because I have put some particular period, think that this amendment is one which should not be accepted. They will find that an amendment like this if accepted will for ever relieve the tenantry from the burden of periodical enhacement and the zamindar will find out that it is no use making applications for enhancement of rent on the grounds stated in section 30, which may yield fruit, in all probability after the zamindar is dead, buried or burnt.

Mr. JOGESH CHANDRA GUPTA: I do not know if the mover of the amendment has read out to this House what his amendment actually is. His amendment is that when a decree for enhancement of rent is passed then 15 years after the date of that decree the enhacement will begin and then for the next 15 years the tenants will be entitled to spead the enhancement decreed, i.e., an enhancement, say for 15 rupees, that may be decreed will be spread over another 15 years, so that the ultimate figure will be reached 30 years after. At the time of tabling this amendment the mover of the amendment must have contemplated a fabulous longevity of the people of this country. Another thing that strikes me when I read this amendment is the popular story about children troubling their old grannies for telling them nice stories and when the grannies cannot afford to lose time with them the grandmother generally repeats the story that there was a certain land in

which there were many pigeons. One day a man threw a net and many pigeons were caught in the net and then they began to get out one by one and then the granny goes on to say "one goes out," "the other goes out" and so on, and that she would not begin her story again until all the pigeons have left. I think, Sir, an idea like this must have pervaded the mover in moving this motion. I have stood up to oppose this amendment not for the purpose of getting it rejected by the House but to say that we have got much more serious matters to consider. The amendments are many indeed which require some serious thought and I should have expected that members would not put forward amendments of this nature and confine us in this House longer than is abolutely necessary.

The Hon'ble Sir PROVASH CHUNDER MITTER: I do not think I need take up the time of the House by discussing this amendment. I formally oppose it.

The motion of Khan Bahadur Maulvi Ekramul Huq was then put and lost.

The following motions were called but not moved :—

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 25, in the proposed section 36, for the word "ten" in line 9 the word "seven" be substituted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, to move that in clause 25, in the proposed section 36, line 9, for the word "ten" the word "six" shall be substituted.

Mr. E. T. McCLUSKIE, Mr. BIJOY PRASAD SINGH ROY and Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 25, in proposed section 36, line 9, for the words "ten years" the words "five years" shall be substituted.

Maulvi TAMIZUDDIN KHAN: So far as this amendment is concerned, it is consequential to motions Nos. 790 and 791, and so I think it is not the proper stage to move it. Will you kindly allow me to move it after No. 790?

Mr. PRESIDENT: I have called on you to move a particular amendment and if you are willing to move it; you may do so.

3-30 p. m.

Maulvi TAMIZUDDIN KHAN: I move that clause 26, amending section 37, shall be omitted.

I am very sorry to say that I have to move this amendment at this stage on account of the unsatisfactory arrangement of the amendments made.....

Mr. PRESIDENT: You are not permitted to make that observation if you mean it as a reflection on the decision of the Chair.

Maulvi TAMIZUDDIN KHAN: Far from that, Sir. I am not making any reflection on the decision of the Chair. But I was pointing out that it was on account of some mistake made in the office.....

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order, Sir. Is it not open to a member to point out that on account of the arrangement of the amendments it would be infructuous if he moves the amendment now?

Mr. PRESIDENT: It is certainly open to him to do that.

Maulvi TAMIZUDDIN KHAN: This clause 26 seeks to omit this portion from the present section 37, that is, "within the same period of fifteen years, the rent has been commuted under section 40, or." This clause presupposes that section 40 will be omitted. Whether section 40 will be omitted or not from the present Act will be decided when motions Nos. 790 and 791 are moved and put to vote. However, as I have had to move my amendment at this stage, I beg to say that there is no reason whatsoever why this portion should be omitted from section 37. Repeal of section 40 as proposed in the present amending Bill will be a great hardship. No portion of the landed interests of this country will lose anything if that section remains in the Act, because under the new amending Act only a limited number of bargadars will have the status of tenants. We have discussed that already and also decided upon that, that is, only those bargadars who are recognised by the landlords to be tenants will be tenants and only those bargadars who have been decided to be tenants by a court of law will be tenants. Therefore, if section 40 of the present Act remains a part of the law, then that will give relief only to the small number of bargadars who will still be tenants. There is no reason why that right of commutation of produce-rent should be taken away. It is a very feeble right upon which some bargadars who are tenants may fall back upon, if necessary, and I do not think there should be an attempt made in this House to take even that feeble right away from the poor bargadars. I therefore move that this clause amending section 37 be deleted.

So far as the second portion of the amendment is concerned, that is only a technical matter which replaces only the new order and rule of the Civil Procedure Code; therefore, I have no objection to that. I have objection only to the first part of the clause, by which section 40 is sought to be omitted from the present Act. With these words, I commend my amendment to the acceptance of the House.

The Hon'ble Sir PROVASH CHUNDER MITTER: I formally oppose this amendment. If this matter came up after amendments Nos. 790-791 we might have considered it, but for the present we must oppose it.

Mr. PRESIDENT: Is it your suggestion that we should take up amendment No. 790 at this stage?

The Hon'ble Sir PROVASH CHUNDER MITTER: I have no objection to that.

Mr. PRESIDENT: Will that suit all parties?

The Hon'ble Sir PROVASH CHUNDER MITTER: Yes.

Mr. PRESIDENT: Maulvi Sahib, you may then move your amendment No. 790.

Maulvi TAMIZUDDIN KHAN: I move that clause 28, repealing section 40, shall be omitted.

I have already said that this section 40 of the present Act should remain a section of the amending Act also, because we in this House have already sufficiently circumscribed the rights of the bargadars and now they are the most helpless class of tenants or labourers under the statute. This section 40 is a section which can give them some relief under certain circumstances. I do not think that we should make another attempt to circumscribe the rights of these helpless people by trying to omit this section 40 from the statute. I would submit that there should be no apprehension at all in any quarter that the retention of section 40 as a part of the statute would do any harm to any class of people. Bargadars would be mere labourers under the new law; they would have no right at any time whatsoever to have their rents commuted to money-rent. Only those bargadars who will be tenants under the law, and they will be very few in number, will have the right of making an application to the court for having their rents commuted. It is perfectly within the discretion of the court, either to allow or disallow the commutation. Therefore, this simple right of the bargadars of making applications should not be taken away. It should not be understood that section 40 is only intended to help

the bargadars and tenants only; it is also a landlord's section because under this section the landlord, if he thinks it would be to his interest, may make an application to the court for having a produce-rent commuted to money-rent; that may be necessary under certain circumstances. So far as my experience goes, I have seen very few applications filed under section 40 and really there are few applications made in the province under section 40. Still that is a feeble right given to the bargadars as well as to the landlords and I think in the fitness of things it should remain in the statute. When I moved another amendment regarding bargadars the other day there was a good deal of misunderstanding that I was going to extend the rights of the bargadars. I do not know why this misapprehension should crop up, whenever this question is raised in the House. I hope so far as this amendment is concerned that sort of misapprehension will not arise in the mind of anybody. It is only an attempt to retain the feeble right of not only the small class of bargadars recognised as tenants but also of certain landlords whose interest would be to make applications under section 40. The other day the Hon'ble Member in charge of Revenue made an appeal to me to withdraw my amendment regarding bargadars. I read a ring of sincerity in his appeal and I withdrew the amendment. To-day I make an appeal to the Hon'ble Member and ask him whether Government can see its way to retain this feeble right of bargadars and not stand in their way any further by making an attempt to remove this section from the Statute Book. I hope the House will be pleased to accept my amendment.

Babu AKHIL CHANDRA DATTA: This provision for repealing commutation is a provision, I submit, for the benefit of petty landlords. The big zamindars are not very much interested in this matter because under section 116 of the Bengal Tenancy Act, raiyats cannot acquire occupancy rights with respect to khamar lands and this commutation section applies only to occupancy raiyats. Therefore in the vast majority of cases the zamindars are not interested in this matter. It is not very just and fair to petty landlords especially when they are minors, orphans or widows who cannot cultivate their lands personally, nor is it fair in the case of middle class bhadraloks, Hindus or Muhammadans, who cannot cultivate their lands themselves but let out their lands for getting paddy for the consumption of their family just for their subsistence, and it is in this light that the matter was considered by Sir John Kerr's Committee in whose report we find this: "In the first place we consider that when the landlord is dependent upon the produce-rent for the subsistence of himself and his household it is inequitable that such a rent should be converted into a money-rent. There are many cases, particularly in Eastern Bengal, where middle class persons have sublet lands on produce-rents for their own subsistence

We therefore propose to except such and similar cases from cummutation." Of course zamindars are a class of people who must be hanged—that is the verdict of some people. I do not know if the same attitude will be assumed towards the middle class bhadroloks who are neither zamindars nor very rich people but who are very poor people whose extinction we certainly do not want. Then we find that though an attempt was made in the Bill drafted by the Kerr Committee to retain the main provision of commutation, we find that many limitations were placed on the rule of commutation in section 25 (*5*) of that Bill:

"If the application is opposed, the said officer shall decide whether in all the circumstances of the case it is reasonable to grant it, and, in particular, he shall have regard to the following circumstances:—

(*a*) whether the rent in kind is mainly required for the subsistence of the landlord and his household, and not for purposes of trade;

(*b*) in the case of land held under trust or other legal obligation for a religious or charitable purpose, whether the rent in kind is required for consumption by, or for the subsistence of, the beneficiaries of the endowment, or for the due performance of worship;

(*c*) whether the landlord of the applicant pays in kind, or otherwise as specified in sub-section (*1*) his rent for the tenure or holding;

(*d*) whether the tenant receives in respect of any portion of the land rent in kind or otherwise as specified in sub-section (*1*) from a sub-lessee."

Then, Sir, it will have to be considered whether this provision would prejudice anybody in any way. It was not a provision which was made merely for the benefit of the tenants. We find in section 40 of the Tenancy Act that the right is given not only to the raiyat, but also to the landlord. The proposed repeal of section 40 means not only curtailment of the rights of the tenants, but also of the landlords.

This proposal after all encroaches upon the rights of people based on a contract between them. The contract is for the tenant to deliver a certain amount of paddy to the landlord. Now, the legislature intervenes and says "No, you must not give a certain quantity of crop but you have to pay money rent." It is a variation of contract against the wish of one party. We all know that the system of produce-rent is an ancient and indigenous system prevalent in many parts of India where mostly produce-rent and not money-rent is paid. Now, one thing is necessary to consider in this connection. The existing provision applies to occupancy raiyats, but does not apply to non-occupancy raiyats or to under-raiyats. Therefore, if you take into consideration the case of

the actual cultivators, it does not apply to him at all. I do not find any amendment proposed of the existing provision to the effect that the rule of commutation should be extended to the under-raiyats and non-occupancy raiyats. There is no amendment to that effect. So, it can only apply to occupancy raiyats. Therefore, the numerous people who are the actual cultivators will not at all be benefited if this provision of commutation be restored. As a matter of fact, I find only two gentlemen giving notice of amendments like this. It must be remembered that in most districts of this province this provision of commutation has been a dead letter ever since it was placed on the Statute Book in 1885. Speaking from my experience at the Bar extending over 30 years and of my own district I can say that I have never come across a single case of commutation. These are the reasons for which I oppose the amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I desire just to make one submission and that is this. My friend Maulvi Tamizuddin Khan said that we should not curtail the rights of the bargadars, and by restoring section 40 to permit bargadars, who are in the position of tenants, to commute their rents in kind into cash. There is no reason for doing this. As pointed out by Babu Akhil Chandra Datta just now, this is a section (section 40) which applies entirely to occupancy raiyats and therefore does not apply to bargadars who are under-raiyats. In this connection, I would read only a passage from the Tenancy Act Committee's report: "Nevertheless all the members recognised that the great majority of bargadars if not, tenants-at-will, are under-raiyats, not raiyats, and that one of the reasons why commutation has seemed so inequitable to settlement officers, and has therefore been so little encouraged, is that it did not apply to under-raiyats." That is the reason why even if section 40 were restored, it will be absolutely of no benefit to bargadars and that, I submit, is a thing which my friend, Maulvi Tamizuddin Khan, did not consider when he said that this is a section which would benefit bargadars. Then, Sir, there are technical rules issued to settlement officers on this point which will be found at page 255 of the Settlement Manual. This section will be absolutely of no help to bargadars and therefore I do not see how the restoration of it will serve any useful purpose.

Maulvi ABUL KASEM: Sir, I rise to support the amendment of my friend, Maulvi Tamizuddin Khan. I have heard my friends on the other side, but they have not said a word as to why this right which has so long been enjoyed by a tenant should be taken away—it does not matter what class of raiyat or tenant is concerned. My friend, Maulvi Tamizuddin Khan, spoke about bargadars and Babu Akhil Chandra Datta said that it does not apply to bargadars. But that is not the point at issue. The point at issue, so far as I understand it, is that a

certain right which has so long been enjoyed by a class of tenants is to be taken away by this Bill. Babu Jogindra Chandra Chakravarti has read some portion of the Tenancy Act Committee's Report, in which it is stated that very seldom action was taken under this section, because it does not give the right to under-raiyats or bargadars. In view of that statement made by that committee, I would have expected that the committee would recommend extending this right to under-raiyats; instead of that they dealt with this in a summary manner by taking away that right. We have been told by Babu Akhil Chandra Datta that from his experience extending over 30 years he has not ever come across a single case in which an application has been made for commutation of rent in his district. I submit that is so, because unfortunately our cultivators—the class of tenants—who had this right did not on account of their illiteracy and their general ignorance know how to exercise that right; besides that, those who knew or who realised their position did not ask for it for fear of displeasing their zamindars. Recently, there has been a realisation of self-consciousness among the raiyats and I believe it will be no news to my friends on the other side when I say that many such cases have been instituted and fought out. One word more, Sir, the leader of the Swaraj Party made a statement the other day that they would be no party.....

Mr. PRESIDENT: Maulvi Saheb, you had better not go into that.

Maulvi ABUL KASEM: I submit, Sir, that this section takes away a right so long enjoyed by the tenants—no matter what class of tenants—who form a very large proportion of the population of this country. I hope, Sir, that this amendment which allows them to enjoy this right will have the unanimous support of my friends to my left.

Mr. F. A. SACHSE: Sir, I admit that produce-paying raiyats have enjoyed this right of commutation for over 40 years. I agree with the mover of this amendment and Maulvi Abul Kasem that it is a serious matter to take it away. Let me, therefore, explain the reasons why Government have, with great reluctance, provided for its omission from the Act. Some of the reasons are identical with those of Babus Akhil Chandra Datta and Jogindra Chandra Chakravarti. Sir John Kerr's Committee found that it was not possible to amend this section in less than three foolscap pages and that in order to remove the inequities of the section, it was necessary to provide various exceptions enabling the courts in certain cases to refuse commutation to a tenant who applied for it. This provision, as agreed to by Sir John Kerr's Committee, involved inquisitorial proceedings and possibly false evidence being given. It was also decided that a raiyat applying for commutation would have to pay a premium; everybody agreed that this was just, but it certainly made commutation of little use to the ordinary tenant.

Then, a stronger objection was that it does not apply to under-raiyats, and we saw no possibility of this House agreeing to the Bill if it introduced commutation for under-raiyats. That is one of the reasons why commutation has been very little used in many districts hitherto. If a settlement officer commuted the rent of three raiyats, then if 103 under-raiyats asked for commutation, the settlement officer would be obliged to refuse it; but the illiterate under-raiyats would not understand his action and said that the Sircar was unjust and hard-hearted. It is true that occupancy raiyats have had this right for a long time. But if they have not taken advantage of it, can they complain very much if it now goes? On the other hand, it seems to me that this provision of commutation in the Act has been productive of very great harm in two ways. First of all, it has encouraged the landlords and the courts to say that raiyats paying a fixed amount of produce are raiyats at fixed rates and that such raiyats are not occupancy-raiyats and cannot get commutation.

4 p.m.

Then the second thing is that I believe that it has been entirely responsible for this agitation against recognising bargadars as tenants. If this House had been quite certain that commutation would disappear, I believe that it would have been much more sympathetic towards bargadars, and that it would not have put up such a strenuous opposition to our proposals for recognising the bargadars, not necessarily as raiyats or under-raiyats, but as tenants with some kind of rights. If Sir John Kerr's Committee had proposed the abolition of commutation at the very beginning, by this time nearly all bargadars and bhagchassies would be at least tenants-at-will by the wording of their kabuliyats.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I would not have had any remarks to offer but for some remarks of my friend, Babu Akhil Chandra Dutta. I have not been able to understand the nervousness of my friend seeing as I do the temper of the House. I may say that by the time the tenancy legislation is passed, it is not the zamindars who will be hanged but the tenants. One after another the rights of the tenants are being taken away in a way which it is difficult to comprehend. I can assure my friend that his argument about the sacrosanct character of a contract is altogether out of place in tenancy legislation. May I point out to my friend that in Act X of 1859 there was a provision that occupancy rights could be barred by contracts. The Government of India and the Government of Bengal made elaborate inquiries and found that taking advantage of that provision the zamindars had been committing such acts of tyranny on the tenant population of Bengal—I shall be quoting the very language of the dispatch of the Government of India—that the present section had to be introduced; —"notwithstanding any contract to the contrary occupancy rights will

grow" in spite of the landlords: The Government of India in its dispatch of 1882 wrote: "Such is the power of the zamindars and so numerous and effective are the means possessed by most of them for inducing raiyats to induce agreements which, if history, custom and expediency be regarded, are wrongful and contrary to good policy that to uphold contracts in contravention of the main purpose of the Bill would be in our belief to condemn it to defeat and failure."

Sir, I have nothing more to say about contract. That provision still stands. Sir, if you read the history of the tenancy legislation of this country, you will find that you cannot allow a contract between a man who happens to be one of the foremost of the educated and cultured gentleman of the country and a man who has to work hard from morning till evening simply to get two meals a day—a man who does not know the three R's, a man to whom we have not been able to give the benefit of education.

Sir, my friend has given us a history of Sir John Kerr's Committee. If my friend will kindly see the details of Sir John Kerr's Committee's report, he will find that that committee did not propose the abolition of commutation, but an extension of the rights of under-raiyats as Mr. Sachse has told us. What is proposed to-day is fine remedy! The remedy is said to lie not in the extension of the system, but in the killing of this system itself! I think, and I hope my friend will also agree with me, that this section is more or less a dead letter. Simply because it has been taken advantage of by very few people and on very few occasions, that is no reason why it should be taken away from the Statute Book. I might remind the Government members of Regulation III of 1818, which has been retained in the Statute Book for occasional use. I can quite understand that this provision is unnecessary only after settlement operations have been finished in the whole of Bengal and the people have come to know their rights and liabilities. That time has not yet arrived, inasmuch as settlement operations have not been undertaken even now in certain parts of Bengal. I do not deny the necessity of repealing section 40, but I consider that it is rather premature to ask for its abolition when even in some parts of Bengal records-of-rights have not been prepared.

My friend, Babu Akhil Chandra Datta, has asked as to why, in spite of the fact that so many of the members are interested in the welfare of the tenants, two of us have given notice of this amendment. Sir, it is no question of one or two members giving notice of an amendment. We are here to work for the rights of the people as we understand them as individuals and as members of this Legislative Council; we are here to work in the best interests of the country. Our's is not however an organised conspiracy. Sir, it is certainly not due to want of heart on our part that more members did not give notice of this amendment.

Sir, I support the motion, not on the ground that the section is necessary, but on the ground that its abolition would be premature.

Srijut NAGENDRA NATH SEN: Sir, I rise to oppose the motion which has just been moved by Maulvi Tamizuddin Khan. The inequity of the present provisions of section 40 is so apparent that even the tenants, for whose benefit the section has been said to be enacted, are reluctant to take advantage of it. The section as it at present stands is a complete negation of contractual rights between landlords and tenants. My friend, Khan Bahadur Azizul Haque, has said that contract is out of place in tenancy legislation. I say: Not always. In cases in which it can be said or shown that one or other of the contracting parties has behaved in such a way as to become a nuisance or a terror or something like a plague-spot in the administration of the country—in those cases alone—the effect of contracts can be negatived.

Sir, so far as section 40 is concerned, it does not show under what circumstances the landlord of an occupancy raiyat is entitled to apply for commutation. It leaves the matter to the sweet will of the settlement or revenue officer. It does not give any right of appeal or revision, or anything of that nature. So, instead of this thing remaining a dead letter in the Statute Book, it is better that it should be withdrawn.

The motion that clause 28, repealing section 40, shall be omitted was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Fyfe, Mr. J. H.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
James, Mr. F. E.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Nazimuddin, Mr. Khwaja.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur.
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Khan Sahib Abdus.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Ramen Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Premotha Nath.
Banerjee, Mr. A. C.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjea, Srijut Bijay Kumar.
Chaudhuri, Babu Prhanendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Sarat Kumar.
Forrester, Mr. J. Campbell.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.

Ghosh Maulik, Mr. Satyendra Chandra.
Gordon, Mr. A. D.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Hussain, Maulvi Latafat.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nundy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 23 and the Noes 62, the motion was lost.

The following motion was not put as it was covered by the foregoing decision of the Council:—

"That clause 26, amending section 37, shall be omitted."

Mr. PRESIDENT: Mr. Nurul Huq Chaudhuri, you disclaimed responsibility for amendment No. 764. I have examined the papers and find that you did send in the amendment. So if there is any mistake it is yours and not that of the Legislative Department.

Maulvi NURUL HUQ CHAUDHURI: A personal explanation, Sir. I am quite sure, Sir, I did not send the amendment which is down on the paper. I had sent in another amendment along with it on the condition that other sections of the Act, namely, sections 29 and 38, should be repealed.

Mr. PRESIDENT: The fact is that the part of your amendment which was allowed is on the agenda paper. I disallowed the rest of it.

Babu AMARENDRA NATH GHOSE moved that in clause 26, after the words "the said Act" the following shall be inserted, namely, "for the words 'within the fifteen years' the words 'within the twenty years' shall be substituted."

(After speaking in Bengali in support of his motion he pointed out that the Legislative Department had altered his amendment.)

Mr. PRESIDENT: There is no mistake. Your amendment was revised in this Department.

Rai Bahadur MAHENDRA NATH GUPTA: I rise on a point o order, Sir. What the member is speaking of does not arise from th amendment that has been tabled.

Mr. PRESIDENT: You heard the member reading out his origina amendment and also the revised one which is on the paper. Pleas point out to Mr. Ghosh the difference between the two.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, it is out o order, firstly because, as has been pointed out by the Rai Bahadur, hi amendment referred only to the portion within the brackets, but if that is not so, it is out of order because, it refers to the portion of the second.....

Mr. PRESIDENT: I think the Rai Bahadur did not say that it was out of order.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Then I say so, Sir.

Mr. PRESIDENT: But I think I must first of all dispose of the point of order raised by the Rai Bahadur. The Rai Bahadur said that what the mover was saying was not covered by the amendment on the paper, whereas the mover read out something from his own papers which he thought would cover the grounds and I asked the Rai Bahadur to point out the difference between the two.

Rai Bahadur MAHENDRA NATH GUPTA: What I meant Sir, was this. The amendment that is on the paper relates only to the italics printed in loco within brackets whereas he has been speaking on line 4 shall not be entertained if within the 15 years next preceding its institution. I submit, Sir, that is not relevant.

Mr. PRESIDENT: Mr. Ghosh, you read out clause 37 and I find that in that clause the periods of 15 years occur in two places and the amendment on the paper only attacks the second period of 15 years. If you mean to attack the words that are within brackets, viz., "within the said period of 15 years rent has been commuted under section 40 or" then you are right, but if you want to attack "within 15 years next preceding its institution, etc.," you are not entitled to do that as that portion of the Act is not exposed by the amending Bill. Now, are you willing to move your amendment as it stands on the paper?

Babu AMARENDRA NATH GHOSE: In these circumstances it is unnecessary for me to proceed with it, Sir.

The motion of Babu Amarendra Nath Ghose was therefore deemed to be withdrawn.

The following amendments were called but not moved:—

Babu JITENDRALAL BANNERJEE to move that clause 26 be re-numbered as clause 26 (*1*) and the following be added as sub-clause (*2*), namely:—

"(*2*) to sub-section (*1*) of section 37 of the said Act, the following proviso shall be added, namely:—

'Provided always that the rent of a holding shall never be enhanced so as to exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit.'".

Mr. SYED MD. ATIQULLAH to move that for clause 27 the following shall be substituted, namely:—

"27. Section 38 of the said Act is repealed."

Babu MAHENDRA NATH MAITI: Sir, I beg to move that in clause 27 before sub-clause 1 (*i*) the following shall be inserted, namely:—

(*ai*) after the words an occupancy raiyat, the words "holding at a money rent" shall be omitted.

Sir, under the existing Bengal Tenancy Act, the occupancy raiyats holding at a produce rent have the right of applying under section 40 for commutation of their produce-rent to money-rent, if they found difficult to pay produce-rent and in such cases money-rent at a much less rate than the average price of the produce is generally found fair and equitable by the officer to whom this application is made, considering all the circumstances mentioned in the section.

Now as this power of applying for commutation is taken away and section 40 is repealed the raiyats paying rent in kind are deprived of any chance of reduction of their rent though their produce-rent may be very high and this would be a great hardship to them. As occupancy raiyats paying produce-rent had this right of commutation and thus getting a reduction of their rent this sub-section 38 was confined to raiyats paying money-rent only; and there is no reason why this section should now be restricted to occupancy raiyats paying money-rent only. As section 40 is omitted I think this section 38 should be so worded as to include raiyats paying rent in kind also and this purpose can be served by the omission of the words "holding at a money-rent." This amendment if allowed, would include all occupancy raiyats whether they pay money-rent or rent in kind.

There is no reason why raiyats paying produce-rent and raiyats paying money-rent should be differently treated in this respect.

For these reasons I put forward this amendment and hope the House would accept this to do justice to the raiyats paying produce-rent.

The Hon'ble Sir PROVASH CHUNDER MITTER: It may save the time of the House, Sir, if I am permitted at this stage to state that Government is prepared to accept this amendment.

The motion of Babu Mahendra Nath Maiti was then put and agreed to.

The following amendments were called but not moved :—

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 27, in sub-section (*1*) of section 38 of the Act, for the words " not otherwise " the words " on no other ground " be substituted.

Khan Bahadur Maulvi MUHAMMAD ISMAIL to move that in clause 27 (*i*) lines 2 and 3, for the words " and the word ' or ' at the end of clause (*a*) " the words " and clause (*b*) " be substituted.

Mr. BIJOY PRASAD SINGH ROY: I beg to move that in clause 27, amending sub-section (1) of section 38, sub-clause (*ii*) shall be omitted. Sir, my main reason for moving this amendment is this, that this amendment if introduced will raise various complications and I think it should be left to the courts of law to determine where the landlords have refused or neglected to carry out the arrangements in respect of the irrigation or the maintenance of embankments, etc., etc., and where not. Any introduction of such a section in the amending Bill will make matters complex and that is why I have brought in this amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: I oppose the amendment, Sir, on the ground that the landlords do not seem to be satisfied with what they have got. It is very equitable that a landlord should have his rent reduced if he has refused or neglected to carry out the arrangements in respect of the irrigation or the maintenance of the embankments which were in force at the time when the rent was settled and the soil of the holding has deteriorated thereby, I say again Sir, it is very equitable and I oppose the amendment for the deletion of this clause.

Mr. F. A. SACHSE: I have never come across an instance of a raiyat being able to get a reduction of rent on account of deterioration of the soil or a fall in the prices of food-crops. I would not mind the

omission of clauses (*a*) and (*b*) a bit, but I would strongly mind the omission of this new clause(*c*). There are many areas in Khulna, Bakarganj, and Chittagong where the raiyat has taken settlement of paddy lands on a fairly high rent in the expectation that the embankments will be maintained in the same way that he has seen them maintained for years by the landlord. If suddenly the landlord neglects his duty, and the salt rivers flood the land, why should not the raiyat get a reasonable reduction of rent. The raiyats must be entitled to a reduction of rent, and the clause has been carefully worded to make it clear that the reduction will only be granted if the court is satisfied that the land has deteriorated and that in that particular estate it was the recognised custom for the landlord to bear the expenses of maintaining the embankments.

The motion of Mr. Bijoy Prasad Singh Roy was then put and lost.

[At 4-30 p.m. the Council was adjourned and it reassembled at 4-40 p.m.]

Mr. PRESIDENT: I propose to have one discussion on amendments 781—785 leaving out 782 for the time being.

Khan Bahadur Maulvi AZIZUL HAQUE: May I move both of my amendments now because they are consequential?

Mr. PRESIDENT: Yes.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 27, the proposed word "or" at the end of clause (*b*) shall be omitted.

It is purely consequential. My real amendment is 783 and I formally move it also:

That to clause 27, after proposed clause (*c*) the following word and clause shall be added:—

"or

(*d*) on the ground that there has been a general deterioration in the productive powers of the land."

Mr. Sachse has just now told us that he has not yet seen a case where it is possible for the tenant to take advantage of the present provision of the law so far as the reduction of rent is concerned because at all times difficulty is felt in proving that the productive power of

the land has deteriorated. Somehow or other we all feel that the productive power of land has deteriorated and that there has been a general deterioration all round. It has been said not only by agricultural experts but by everybody connected with agriculture and the economic welfare of this province. I therefore propose that to the existing clause a fourth clause be added, namely, "or on the ground that there has been a general deterioration in the productive power of the land." I do not think it necessary for me to say much to explain to the House the equity of the thing. There is no doubt that the landlord is entitled to a certain amount of rent and that rent is a progressive one which has been accepted by the present landlords and the tenants. But it was not a progressive rent before 1859. From 1859 and after the legislation of 1885 the Government have accepted the principle, which is the "old customary" principle and that the rent should be a progressive one to vary according to certain conditions. In fact it is a progressive rent which varies according to certain circumstances. So I have come to the House with the proposal that whenever there is a general deterioration in the productive power of the land the tenants should be given a certain amount of relief in the matter of reduction of rent. It requires no words from me to convince the House because it is known to all of us that unless some definite steps are taken, this general deterioration will affect the welfare of the people. I was only this morning working into the fiscal history concerning my own district—the district of Nadia. I find that the soil of the Nadia district had been noticed even in the year 1772 to have been deteriorated and that soil has remained as it was in that year and has grown worse. It has not improved. I therefore formally move that there is a good case for reduction of rent when there is a general deterioration in the productive power of the land. May I remind the House that the present law gives the right to the landlord to increase the rent if the productive power of land has increased. Therefore to a certain extent this principle has been accepted that when the opposite happens there should be a reduction of rent. This is a broad principle upon which the agricultural and economic improvement in the condition of the people in Bengal depends, namely, that when there has been a general deterioration in the productive power of the land there should be a reduction of rent. It is necessary to provide for some sort of relief in the interest of the tenantry, but so far as the present section is concerned the tenantry has not been able to improve their position.

The following amendments were called but not moved :—

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 27 (*ii*), section 38, after proposed clause (*c*), the following shall be added, namely, "or on the ground that the cost of cultivation and of procuring the necessities of life have increased."

Babu NAGENDRA NARAYAN RAY to move that in clause 27 (*ii*), after the proposed clause (*c*) in sub-section (*1*), of section 38, the following shall be added, namely:—

"or

(*d*) On the ground that the rate of rent of any holding has been unjustly enhanced over the prevailing rate of the locality ruling at the time of enhancement otherwise than on the ground of improvement at the cost of the landlord or increase in area under section 29 or when enhancement is made once at a time more than two annas in the rupee or at intervals less than fifteen years in violation of the sacred rights granted to raiyats under this Act."

Srijut NAGENDRA NATH SEN: I have great pleasure in supporting the amendment which has been brought forward by Khan Bahadur Azisul Haque. Although it has been pointed out that some of the portions of this proposed clause are covered by clause (*a*), I think the Khan Bahadur's proposal is of a far-reaching character and therefore on this ground it ought to be accepted. There is no reason why a tenant or a raiyat should not be entitled to a reduction of rent on the ground that there has been a general deterioration in the productive power of land. The proposed sub-clause says:—

"on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the current of the present rent."

The Khan Bahadur's amendment is more general. It does not confine the ground on any specific cause. Therefore, I submit it should be accepted by the Government.

Mr. SARAT C. BASU: I am sorry to say that this section of the Bill is sought to be amended, namely, clause 3 of section 38. It is not intelligible to me how this clause will work.

Mr. F. A. SACHSE: We are not discussing clause (*c*) now.

Mr. SARAT C. BASU: I am discussing the clause taking along with it the proposed amendment. That is what I am going to discuss. In the first place I beg to invite attention to the fact that several amendments have become unintelligible for this reason that in the original section that has been put in, namely, in clause (*c*), it has not been specified as to what is irrigation, what is arranged in respect of irrigation.

Mr. PRESIDENT: I may tell you what we have actually decided to do. We will now discuss only the amendments and the clauses of the Bill will be open to discussion after the amendments have been disposed of. So do confine yourself to the amendments.

Mr. SARAT C. BASU: With regard to amendments that have been moved they look very well on the paper. But the question is: Can the circumstances that are mentioned be proved in a court of justice? To my mind none of these amendments are capable of being proved in a court and even if it were in a hypothetical case or in an extreme case the time that will be taken up and the litigation that will result will be quite incommensurate with the advantage that is sought to be given. Just for an example I say: whenever a tenant is in arrear as regards rents and he finds that a suit is likely to be instituted for the recovery of that rent he will at once come forward to the landlord for abatement on the grounds that are mentioned here. Now we should consider the time that will be taken up in deciding these matters. That will not be less than 3 years, that is one year in every court. By that time the case goes out of the hands of the tenants and the matter that has been complained of has not been remedied. If it is heightened then there will be another suit immediately after that for the purpose of getting further rent. In this way both the landlords and the tenants will go on being harassed ad infinitum and it will be increasing the cost of litigation. Therefore, I suggest that these amendments should not be discussed as it is impossible to deliberate upon them until the principal section of the Bill over which these changes are sought to be made are discussed in this House. But at present I will only content myself in saying that these amendments look very well for the tenants but when it comes to practicality it will be impossible for the tenants to encompass their objects and the result will be that both the tenants and the landlords will be impoverished by litigation.

Mr. F. A. SACHSE: If I believed that the new ground proposed for the reduction of rent of a tenant would make it easier for the raiyat under reasonable circumstances to get a reduction than under clause (*a*), I would certainly not oppose the suggestion; but it seems to me that it is very much the same except in the use of the words "general deterioration" instead of "permanent deterioration." It is certainly not good for a raiyat to go to a court for reduction of rent, spending all the money he has on a civil suit, unless the deterioration is more or less permanent. The words "general deterioration" which appear in this amendment are too vague. What is general deterioration? I oppose the amendment on the ground that it is superfluous and it would not really help the raiyat.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I think the principle underlying this amendment, namely, that when there is a deterioration in the productive power of land, should always be regarded as a good ground for reduction of rent. But we have in this section, as it stands, three specific grounds which are very clearly stated. The first is:—

> on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual;

the second is:—

> on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent;

the third is:—

> on the ground that the landlord has refused or neglected to carry out the arrangements, in respect of the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated.

These are specific grounds and are definite and very clear. These are the grounds upon which a raiyat can come and ask for reduction, but when we are asked to accept this amendment, namely, that the raiyat should have a further ground to ask for reduction because there has been general deterioration, I am afraid it will introduce something in law which will be always difficult to make out in a court of law. Questions will always arise as to what is meant by a general deterioration, and as to whether or not there has been a deterioration of the soil, and evidence as to what the quantity of produce has been for the last few years and what it was in other years. The fall in production may be due to the fact that the soil was not manured properly and other reasons may also be put forward. So the matter will be so complicated that it would be extremely difficult for the tenant to get the benefit of introducing a clause like this, namely, that a tenant will have a right of reduction of rent if there is a general deterioration of the productive power of land. For this reason I am afraid this is an amendment which cannot be incorporated in the section and I am sorry that I do not see my way to support it.

Maulvi TAMIZUDDIN KHAN: I will say just a few words in support of the amendment of Khan Bahadur Azizul Haque. It has been said that the amendment proposed is too vague and that it will be impossible for the poor raiyat to prove that there has been any

general deterioration in the productive powers of his land. If we go upon a principle like that then we should give up many of the amendments and also many of the sections of the present Act. The question is whether in justice to the tenants we should decide upon a principle like that. As Khan Bahadur Azizul Haque has already pointed out, in section 30 of the present Act there is a clause like that, that is, a landlord can enhance the rent of a holding if the productive power of the land held by the raiyat has been increased by fluvial action. I will put a specific case. If in a particular piece of land on account of fluvial action the soil is enriched year after year then the landlord is entitled to an enhancement of rent, supposing for certain reasons after a few years there is no such influx of water containing silt and the land deteriorates then what will happen? It may be said that that comes up very well under clause (*l*). I say it may or may not come under that clause and there may be a good deal of doubt about that. If the amendment proposed by Khan Bahadur Azizul Haque is not really harmful to anybody, I do not see why we should not make the law clear. As the landlord may get an enhanced rent under certain conditions I do not see why the raiyats should not be allowed to take advantage of conditions when the circumstances are quite opposite. The amendment of Khan Bahadur Azizul Haque is quite reasonable and I think it ought to be accepted.

5 p.m.

The following amendments were then put and lost:—

"That in clause 27, the proposed word 'or' at the end of clause (*b*) shall be omitted."

"That to clause 27, after proposed clause (*c*), the following word and clause shall be added:—

'or

(*d*) on the ground that there has been a general deterioration in the productive powers of the land.'"

Babu SACHINDRA NARAYAN SANYAL: I beg to move that in clause 27 (*ii*), in proposed clause (*c*), in lines 4 and 5, after the words "or the maintenance of embankments" the words "which the landlord agreed to do under written contract" be inserted.

My intention in moving this amendment is simply to avoid troubles. If written contracts are not insisted upon, instead of verbal agreements, there would be a good deal of useless litigation over this simple affair which will affect both the tenants and the landlords. I appeal to all sections of the House not to import any party question on such a simple matter and hope that Government will accept this reasonable proposal in the interests of the raiyats as well as of the landlords.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I oppose this amendment. As previously explained by Mr. Sachse with regard to clause (*c*) of section 38, it is perfectly clear that in many districts there is an understanding between the landlord and the tenant that the landlord will carry out certain arrangements in respect of the irrigation, the maintenance of embankments, and so on. The amendment moved by my friend proposes that this must be done by a written contract. The words which he proposes to add are "which the landlord agreed to do under written contract." I do not know in how many cases it will be possible to say that there is a written contract. If, however, on the understanding that the landlord will maintain certain embankments, the tenant takes a settlement of the land on a high rate of rent, it stands to reason that the landlord will carry out those arrangements, and if he does not, the tenant may under the provisions of this section institute a suit for the reduction of his rent. I therefore oppose the amendment.

Mr. F. A. SACHSE: On behalf of Government I oppose this amendment.

The motion of Babu Sachindra Narayan Sanyal was then put and lost.

Mr. BIJOY PRASAD SINGH ROY: I beg to move that in clause 27 to the proposed clause (*c*), in sub-section (*1*) of section 38, the following proviso be added, namely:—

"Provided that if it is proved that the arrangements in respect of irrigation or maintenance of embankments are nullified by any act on the part or on behalf of the tenants concerned the failure of such arrangements will not be accepted as a reason for any reduction claimed."

I do not think there will be any justification for opposing this amendment. The object of my amendment is to make it clear that the tenant should not claim any reduction of rent when the holding is rendered unfit for cultivation by any act on the part of the tenant, and that he should suffer for his own action.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I oppose this amendment. It is clear that the object of this section is to introduce certain grounds under which the tenant can ask for a reduction of rent. The mover of the amendment proposes that if it is proved that the arrangements in respect of irrigation or maintenance of embankments are nullified by any act on the part or on behalf of the tenants concerned, the failure of such arrangements will not be accepted as a reason for any reduction of rent; that is, if the tenant does something or something is done on his behalf which nullifies the arrangements in

respect of irrigation or maintenance of embankments, then there should be a bar to reduction of rent. Well, Sir, on principle I oppose it. I submit that if the amendment is accepted, the whole principle which has been introduced in section 38 which gives very clear right to the tenant to have his rent reduced under certain circumstances will be frustrated, and that there should be no proviso to minimise the effect of this clause.

Rai MAHENDRA NATH GUPTA Bahadur: I would oppose this amendment; it is unnecessary under sub-section (*c*), as accepted. The gist of that sub-section is "neglect" or "refusal" of the landlord. The point proposed in the amendment would certainly be one of the many matters which the court will consider when deciding the landlord's neglect or refusal. If the amendment is accepted, it would complicate matters. I would therefore oppose this amendment on behalf of Government.

The motion of Mr. Bijoy Prasad Singh Roy was then put and lost.

Mr. A. K. FAZL-UL HUQ: Sir, in the absence of my friend, Babu Jitendralal Bannerjee, may I be permitted to move this amendment?

Mr. PRESIDENT: Yes, Mr. Huq, you have my permission to do so.

Mr. A. K. FAZL-UL HUQ: I beg to move that in clause 27 (*ii*) to proposed clause (*c*), of section 38 (*1*), the following be added namely:—

"*Explanation.*—A suit for reduction may be instituted or a plea for reduction taken by any one among a number of the co-sharer tenants of a holding."

The principle involved in the suggestion is a very simple one. It seems to me that it gives to a number of tenants occupying a holding a right which they certainly ought to be given, because it is a right which is common to all. It is on the same common principle on which a co-sharer landlord is entitled to claim relief against a number of tenants. There is no reason why this proposal should not be accepted. It makes the position clear so far as the individual rights of a number of tenants are concerned. With these words I move this amendment for the consideration of the House.

Rai Bahadur MAHENDRA NATH GUPTA: I beg to oppose this amendment for the simple reason that it is unnecessary. A co-sharer landlord cannot act independently because of the existence of section 188. There is no corresponding section with regard to tenants. Therefore, a co-sharer tenant can always act as is contemplated in the amendment. The amendment is unnecessary and the explanation, if inserted, would lead to complications.

Mr. A. C. BANERJEE: I oppose this amendment, because I agree with the Government that it would lead to complications. First of all, let us examine what will happen in hypothetical case. Say, that there are five tenants liable to pay Rs. 5 per year jointly to the landlord. One of them gets an order of abatement and the others do not join him. When the landlord wants to enforce his right against the five, the remaining four will say "our rent is very different; we have nothing to do with the new arrangement and that therefore there is no cause of action against us"; and that means complication. There is no provision that the co-sharer tenants will be parties to the suit. The tenants also will have difficulty in their way. After 20 years of occupation there is presumption that the tenants will have occupancy rights. After say 18 or 19 years if the landlord can manage to get round one of the tenants out of these five and asks him to apply for abatement of rent, and if the tenant acts according to the advice of the landlord, will it bind the rest of the tenants? What will happen? It will lead to complication so far as the rights of the other tenants are concerned. It will nullify the effect of the right that is sought to be given to the tenants after 20 years of occupation, because by getting round one of the tenants the landlord will be able to deprive the remaining four of their rights. It leads to complication both from the stand-point of landlords as well as tenants. I hope the House will not accept the amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: My friend, Mr. A. C. Banerjee, is suffering from myopia, it seems, as he is using spectacles. When he was speaking against the amendment, he consistently took out his spectacles, so that he might see things wrongly. Any way, he wanted to look at it wrongly. My friend has stated that one co-sharer tenant may not be liable for the other co-sharer tenants. I think the ordinary principle of Civil Procedure Code provides adequate protection and will have to be applied before any relief is given. I cannot conceive of a greater absurdity than the fact that when one co-sharer tenant asks for reduction of rent, the other co-sharer tenants will come in and say that they do not want it. If it comes, that is all the more reason why there should be a provision like this.

Babu JOGINDRA CHANDRA CHAKRAVARTY: I want to make one point clear and that is that it will not lead to any complication. There is no apprehension of thinking that as a matter of fact, if this explanation is introduced into the Act, it will lead to complication. Mr. A. C. Banerjee has said that there is nothing in the amendment to show that the co-sharer tenants will not be a party. All that is given here is that the tenant has a right to institute a suit for reduction of rent under certain conditions. There is no reason for thinking

that the inclusion of this matter will lead to any complication whatsoever. Though I think it is absolutely unnecessary, still I do not think it will complicate matters in any way.

The Hon'ble Sir PROVASH CHUNDER MITTER: I may say at the outset that we have no objection to the principle underlying in this amendment. As Rai Bahadur Mahendra Nath Gupta has pointed out, our difficulty is that it may give rise to certain complications. I quite agree with Babu Jogindra Chandra Chakravarti that so far as the question of principle is concerned, there may not be any complication at all. But as regards the procedure there may crop up certain complications.

Well, in the first place, we all know that when there are four persons enjoying a common right anyone of them can make the others parties to the suit, if the latter refuse to join as plaintiffs. So, one of several raiyats can institute a suit for reduction of rent making the other tenants as well as the landlord a party to the suit; although my lawyer friends are perhaps aware that there may be one or two rulings here and there in which the right of one tenant alone to institute a suit for reduction of rent has been questioned. So, I think there is justification for this amendment. I am going to throw out a suggestion which if accepted may meet the case of the tenants and may avoid any complication. The suggestion, of course, can only be accepted with your leave, and the leave of the House. We shall be quite prepared to accept the amendment if some such words as "in a suit properly framed for the purpose" be added at the end of the explanation. I am not using drafting laungage. It is a drafting matter and I leave it to Mr. Chakravarti and Khan Bahadur Maulvi Azizul Haque. So long as the idea is there we are quite prepared to accept it.

Mr. A. K. FAZLUL HUQ: I agree to the amendment proposed by the Hon'ble Member in charge.

The following amended motion was then put and agreed to:—

"That in clause 27 (*ii*) to proposed clause (*c*), of section 38 (*I*), the following shall be added, namely:—

"*Explanation.*—A suit for reduction of rent properly framed for the purpose may be instituted or a plea for reduction of rent taken by any one among a number of co-sharer tenants of a holding."

Maulvi TAMIZUDDIN KHAN: May I, Sir, with your permission move amendment No. 788 which stands in the name of Babu Jitendralal Bannerjee?

Mr. PRESIDENT: Yes, you can move the amendment.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 27 after proposed clause (*c*), in section 38, the following shall be added, namey :—

"*Explanation.*—A plea for reduction of rent on one or more of the above grounds may be taken by an occupancy raiyat holding at a money-rent in a suit for recovery of arrears of rent instituted by the landlord."

Sir, I need hardly say much in supporting this amendment. This seems to be a very reasonable proposal. Unless there is such an amendment the clauses under which a raiyat can ask for reduction of rent will be hardly of any use to the raiyat, because at his own initiative he will seldom go to court for reduction of his rent. If he is given the right of a reduction in a suit for arrears of rent, then it will be far easier for the raiyat to raise such a plea. This will not be an impediment to the landlords. I therefore think that this amendment will be accepted by Government. It may be said that under the present law he can take a plea like that, but I think that there is an element of doubt and in order to clarify the law this amendment should be accepted. It will not only give the raiyats facilities for taking up the plea which they undoubtedly can under the law, but will also check litigation to a certain extent. I therefore hope that this amendment will be accepted.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, we have given our best attention to this amendment and we discussed it thoroughly. I may say at once that we fail to appreciate the principle that is embodied in this amendment, namely, that an issue like this should be allowed to be raised in a rent suit. That is the principal objection which we have against an amendment of this nature. We all know that in rent suits complicated issues ought not to be allowed to be raised, and that a suit for rent may not be converted into a suit of another nature. We also know that in many cases it is not really the raiyat who raises the issues but there are persons who are the raiyat's advisers, who foment litigation; and it will be more to the interest of these advisers than to the interest of the raiyat if pleas of this character were allowed to be raised in a rent suit. I therefore oppose this amendment.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I beg to oppose this amendment, both for the interest of the landlord as well as that of the tenant. This will make an otherwise uncontested rent suit a contested one—no doubt a great temptation for lawyers, but certainly a temptation which we should do our best here to discourage.

There is another point. If this be permitted, a corresponding right of asking for enhancement by landlords in rent suits cannot be resisted. They may also say that under cover of rent suits or suits for arrears of rent they can bring in claims for enhancements. Rent suits must be simple, when the rent claimed is the existing rent and the account is correct. All extraneous matters should be avoided as much as practicable. With these words I oppose the amendment.

Mr. A. K. FAZLUL HUQ: Sir, in reply to my friend, Mr. Chakravarti, who wanted to know the underlying principle of this amendment, I may briefly state in the absence of my friend, Mr. J. L. Bannerjee, what I think is the underlying principle. It is simply this. It is permissible to the landlord to sue for arrears of rent and also for enchancement of rent. It is permissible to the landlord not only to sue for enhancement but to sue for arrears due at the enchanced rate. The principle involved in this amendment is similar, namely, it will be open to a tenant not merely to put forward a plea for a reduced rate but to pay at the reduced rate. Whether it will introduce complications, or, as has been pointed out by the Rai Bahadur, it will lead to greater litigation, is a matter on which I do not wish to say anything. I would only submit that on a point of principle it is a privilege that is enjoyed by landlords and this privilege is sought to be extended to the tenant. With these words I support the amendment.

The following motion was then put and lost:—

"That in clause 27, after proposed clause (*c*), in section 38, the following shall be added, namely:—

'*Explanation.*—A plea for reduction of rent on one or more of the above grounds may be taken by an occupancy-raiyat holding at a money-rent in a suit for recovery of arrears of rent instituted by the landlord.' "

Mr. BIJOY PRASAD SINGH ROY: I move that to clause 27, amending section 38, the following shall be added, namely:—

"(2) To the said section the following proviso shall be added, namely:—

'Provided that in case of such reduction being granted the landlord shall have the option of terminating the tenancy on such terms as the court considers fair and reasonable.' "

Sir, as the tenant is given the right to ask for a reduction of rent, I think the landlord should also be given the corresponding right to terminate a tenancy when the tenant finds that the land he holds is no longer profitable and for that reason asks for a reduction of rent. I think it is only fair to the landlord to have this right.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I oppose this amendment. The very words of this amendment show that the principle underlying it is absolutely unjust. So far as I can see, there is no justice in this amendment. A certain right is given to the tenant and that right is that he will have his rent reduced if certain circumstances happen, just as certain rights are given to the landlord for increasing the rent. Well, if the tenant has good ground and asks for reduction of rent, there is absolutely no justification for asking him to clear out and give up possession of the land if the rent is reduced. A tenant may be holding the land for generations. It may be his homestead. There is absolutely no reason why, if certain circumstances happen, which entitle a tenant to a reduction of rent, he should be asked to vacate the land. In this view of the matter, it is an unjust principle which underlies this amendment.

Mr. F. A. SACHSE: Sir, I oppose this amendment on the ground which has just been given by Mr. Chakravarti. If it were accepted, no raiyat would dare to apply for reduction, however sound might be the grounds for his doing so. It is preemption in a new place and in a new form. It is a reflection on the good sense and justice of the civil court which has reduced the raiyat's rent to a sum which it considers fair and reasonable. It will stultify the action of the court, if the landlord who does not approve of the rent fixed can ask the tenant to clear out.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, I rise to oppose the amendment. As has been pointed out by Babu Jogindra Chandra Chakravarti, it will be wrong to give such right to the landlord which was not provided anywhere in the old Act. But what is surprising to me is that in this matter I am at one with Mr. Chakravarti. I do not know what prompts him to be with us. The attitude of Mr. Chakravarti and his friends reminds me of the lines of the poet—

> What boots it at one gate to make defence,
> And at another to let in the foe.

This amendment with the support of the friends of the tenantry and Government vote is bound to go, and so Mr. Chakravarti and his party support the amendment and assume an air of innocence and pose as friends of the tenants by opposing this amendment.

The motion of Mr. Bijoy Prosad Singh Roy was then put and lost.

Mr. F. A. SACHSE: Sir, I beg to submit that motions Nos. 792, 793, 794 and 795, fall through now that section 40 has gone out.

The following motions accordingly failed:—

Khan Bahadur Maulvi EKRAMUL HUQ to move that for clause 28, the following shall be substituted, namely:—

"28. In section 40 of the said Act—

(a) after clause (d) of sub-section (4) the following proviso shall be added, namely:—

Provided that the rent so commuted should in no case be more than double the prevailing rate;"

(b) in sub-section (5) after the word 'effect' the words 'which should be immediately on the passing of the decree for commutation' shall be added;

(c) in sub-section (6) after the word 'opposed' the following:—

'and the person opposing does not possess an income of Rs. 600 per year from other sources'

shall be inserted.

Mr. A. K. FAZL-UL HUQ and Maulvi TAMIZUDDIN KHAN to move that clause 29, repealing section 40A, shall be omitted.

Khan Bahadur Maulvi EKRAMUL HUQ to move that for clause 29, the following shall be substituted, namely:—

"29. In section 40A of the said Act—

(a) in sub-section (1) for the words 'fifteen years' where they first occur the words 'thirty years' shall be substituted, and

(b) in sub-section (2) for the words 'fifteen years' the words 'thirty years' shall be substituted."

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I beg to move that clause 30 shall be omitted.

My reason is that under the present law non-occupancy raiyats can be ejected only under certain circumstances. Government propose to add two more clauses for the ejectment of non-occupancy raiyats, viz.—

(1) on the ground that the term of his lease has expired, when he has been admitted to occupation of the land under a written lease; and

(2) on the ground that the tenancy has been terminated by his landlord by six months' notice expiring with the end of the agricultural year, when he holds the land otherwise than under a written lease.

Sir, no explanation has been put forward as to why these clauses are necessary. I, therefore, move that clause 30 be omitted.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, clause 30 introduces entirely new grounds for the ejectment of a non-occupancy raiyat, viz.—

(1) on the ground that the term of his lease has expired, when he has been admitted to occupation of the land under a written lease; and

(2) on the ground that the tenancy has been terminated by his landlord by six months' notice expiring with the end of the agricultural year, when he holds the land otherwise than under a written lease.

Sir, these are absolutely new provisions which are sought to be introduced in the law for the ejectment of non-occupancy raiyats, and for that reason I support this amendment of Khan Bahadur Azizul Haque. There is absolutely no reason why further restrictions and further modifications should be introduced in the law for the ejectment of non-occupancy raiyats. If the non-occupancy raiyats cannot be ejected now under certain circumstances, there is no reason why a special provision should be introduced for the purpose of enabling landlords to eject non-occupancy raiyats.

Mr. F. A. SACHSE: Sir, there are very few non-occupancy raiyats in Bengal now, and I hope this House will not waste time discussing this question. The amendments proposed in section 44 regarding the ejectment of non-occupancy raiyats are designed to remove obvious defects in the drafting of the existing section. There is no intention to introduce any real change in the law. There is no mention in the section, as it now exists, how a non-occupancy raiyat without a lease or without a registered lease can be ejected. It can never have been intended that non-occupancy raiyat with a registered lease should be in a worse position than non-occupancy raiyats without registered leases or without any leases at all. So this provision has been put in. It is equivalent to the old section 45 which was removed in 1908. That section made it necessary for the landlord before turning out a non-occupancy raiyat with a lease to issue a notice to quit six months before ejectment. It is reasonable that a non-occupancy raiyat should be liable to ejectment on the expiry of his lease when he has been admitted to occupation under a written lease, whether the lease has been registered or not. It is also reasonable that he should be given six months' notice when holding otherwise than under a written lease. As regards the other change, it is considered that it is unnecessary to make a non-occupancy raiyat go to the expense of registering the lease.

Mr. A. K. FAZL-UL HUQ: Sir, it has been really a surprise to me that an experienced officer like Mr. Sachse, who has spent so many years in the Settlement Department, has overlooked the dangers underlying the innovation that he has sought to introduce. I would appeal to Mr. Sachse to consider one very simple point. A case may arise where a non-occupancy raiyat, who is just going to acquire occupancy rights, may be turned out by a clever landlord, who does not want that the former should acquire such rights, by simply giving six months' notice. Where is the provision in the law to meet such cases which may suddenly arise? I submit that cases like that ought to be prevented by legislation by all the precautions that can be conceived. With these words I commend the amendment to the acceptance of the House. I can assure my European friends opposite, who may not realise the dangers underlying this innovation, that if this principle be not accepted, and if this new rule for ejectment be introduced, there will hardly be any non-occupancy raiyat acquiring rights of occupancy by the operation of time, because as soon as he will try to acquire that right, the landlord will step in and turn him out by giving six months' notice. That is the reason why this provision did not find a place in previous legislation. I would again appeal to Mr. Sachse to consider this point.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, If you will give us a minute's time, we will consider the matter. Though we oppose the amendment, we may offer something which may be acceptable to my friends.

Sir, I would ask the movers of the amendment if they will agree to the substitution of the words "twelve months'" for the words "six months'" in line 2 of sub-clause (*cc*) of Bill clause 30(*ii*)—"on the ground that the tenancy has been terminated by his landlord by six months' notice....." If they are willing to accept this, we shall accept the amendment: otherwise we oppose the amendment.

Babu AKHIL CHANDRA DATTA: Whether it is six months or twelve months, it is a new ground all the same for ejectment, and, therefore, we oppose it.

Mr. PRESIDENT: In that case, I will put the amendment as it stands.

The motion that clause 30, shall be omitted was then put and a division taken with the following result:—

AYES.

Azizi, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Maueher.
Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjee, Dr. Pramathanath.
Banerjee, Babu Promotha Nath.

Basu, Mr. P. C.
Basu, Mr. Sarat C.
Chakravarti, Babu Jogindra Chandra.
Chakrabortty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Maulvi Nurul Huq.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Naskar, Babu Hem Chandra.
Nazimuddin, Mr. Khwaja.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sattar, Mr. Abdool Razak Hajee Abdool.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sulaiman, Maulvi Muhammad.

NOES.

Abbott, Mr. E. D.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Banerjee, Mr. A. C.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Bassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Dowding, Mr. T. W.
Addie, Mr. A. McD.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Marr, the Hon'ble Mr. A.
Martin, Mr. C. S.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Pravash Chunder.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Reid, Mr. R. N.
Roy, Mr. Bijay Prasad Singh.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Rai Sahib Rebati Mohan.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 52 and the Noes 45, the motion was carried.

The following motions failed:—

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 30 (*i*) in proposed clause (*c*), line 2, after the word "expired" the words "except in case when the non-occupancy raiyat is a tenant of the village in respect of other holding or is a permanent resident of the village where the holding is situate," shall be inserted.

Kazi EMDADUL HOQUE and Babu AMARENDRA NATH GHOSE to move that sub-clause (*ii*) of clause 30, be omitted.

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 30(ii) at the beginning of the proposed clause (cc) before the word "on" the following words shall be inserted; namely: "Except in case when the non-occupancy raiyat is a tenant of the village in respect of other holding or is a permanent resident of the village where the holding is situate."

The following motion was called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that in clause 31, in sub-clause (*d*), amending sub-section (7), of section 46, the words "unless he has acquired a right of occupancy" shall be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that to clause 31, after new sub-clause (*d*), the following sub-clause shall be added, namely:—

"(*e*) After sub-section (*10*) the following sub-section shall be added, namely:—

"(*11*) No suit for ejectment shall lie against any tenant under this section within 5 years from the date of admission to the occupancy of land."

My ground for moving this amendment is this: the present law provides for certain contingencies under which a raiyat can be evicted. Now there is necessity of any further amendment of section 46 of the old Act. The old section 46 provides certain grounds for eviction and says that a suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy raiyat unless the landlord has tendered to the raiyat an agreement, etc. I think I can at once tell the House that one of the reasons under which the present legislation was undertaken is to favour the growth of occupancy rights for under-raiyats and not to do anything which will view the growth of occupancy rights with disfavour. But I do not see any section in this Bill which favours this growth. After an under-raiyat has been admitted, he may be evicted at any moment. There is absolutely no law to prevent a non-occupancy raiyat being evicted soon after.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Not if this amendment is carried.

Khan Bahadur Maulvi AZIZUL HAQUE: That is why I have moved for this relief. But my friend points out that it will not be so, but I will consider it later on after I have heard his reply proper. I do not see any reason why my amendment "that no suit for ejectment shall lie against any tenant under this section within 5 years from the date of admission to the occupancy of land" should not be accepted.

Mr. F. A. SACHSE: In view of the fact that the amending section 44 has not been approved by this House, I see no necessity at all for this amendment. Why should not a non-occupancy raiyat be ejected by his landlord 2, 3 or 4 years after admission, if in that period he has not behaved well? Why should the landlord wait five years to turn him out? The proposed amendment would not prevent the non-occupancy raiyat from being turned out after 5 years.

Khan Bahadur Maulvi AZIZUL HAQUE: Now I see the point. I gave notice of this amendment on the supposition that it should be deleted. Now with the leave of the Council I beg to withdraw my amendment.

The motion of Khan Bahadur Maulvi Azizul Haque was then, by leave of the Council, withdrawn.

The following motion was called but not moved:—

Maulvi NURUL HUQ CHAUDHURI to move that in clause 32, in the proposed section 48, last two lines, for the words "at the time of his admission" the words "at any time whether before or after the commencement of the Act," shall be substituted.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 805, 806 and 807.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 32, after the proposed new section 48, the following proviso be added, namely:—

"Provided such rent shall not exceed the rent payable by the landlord by more than thirty per cent. when the under-raiyat holds his lands under a registered lease and twenty-five per cent. in all other cases."

Sir, a grave departure is being made with regard to the status, responsibility and liability of under-raiyats and I think everybody interested in the agricultural development of this country is looking forward to the discussion in this House as regards the status of under-raiyats. I believe that there are no two opinions in this House that the question of transferability of occupancy rights is a matter that brings along in its train the question of the status of under-raiyats. I think I am not using any language of exaggeration if I say that in the coming days the under-raiyats will be the actual tillers of the soil. Sir, the statistics in settlement proceedings during the last few years will show that the number of under-raiyats in the districts of Bengal even under the present law can be counted not by hundreds but by tens of thousands and lakhs. In view of the fact that the question of the status of under-raiyats is a matter of momentous importance not only

to this House but also to the wider world which looks to the improvement of agriculture in this Presidency with some concern I have tabled this amendment. I find that the question of the determination of rent so far as the under-raiyat is concerned, is left to a contract between the raiyat and the under-raiyat. Under the present law the landlord of an under-raiyat was not entitled to recover rent exceeding the rent which he himself paid to his own landlord by more than a certain percentage—50 per cent. in cases where he held his land under a registered lease and 25 per cent. in all other cases. In place of that old law an amendment has been brought in by which it is proposed that the under-raiyat would be admitted by the occupancy raiyat if he paid the rent which may be agreed between him and his landlord. Sir, as I have already said, the present law lays down a certain percentage to be paid as rent by the under-raiyat to his landlord. And in place of that law we are going to substitute agreement as regards rent between the raiyat and the under-raiyat. I view this new arrangement with some amount of concern. I quite feel that there are difficulties as to what is 50 per cent. more than the rent which is actually payable by the raiyat. But sections 48 and 49, although they are not resorted to, are a great check upon abuse of power. But instead of keeping the old law you are leaving the under-raiyat to the mercy of a contract. I have already had my say so far as the contract between the raiyat and the under-raiyat is concerned and I think we cannot leave the latter absolutely at the mercy of this contract. I believe, Sir, we all wish at least that the status of the under-raiyat will not be made worse than what it is already. That is why I have maintained the old law and have made one alteration to the effect that the rent shall not exceed the rent payable by the landlord by more than 30 per cent. when the under-raiyat holds his lands under a registered lease and 25 per cent. in all other cases.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I beg to oppose this motion. As has been just explained by the mover.. .....

Mr. PRESIDENT: I am sorry to interrupt you, Khan Bahadur. I proposed to have one discussion on several allied amendments, so, would you wait till the other amendments of the group we have touched are moved?

Maharaj Kumar SRIS CHANDRA NANDY: I beg to move that in clause 32, section 48, the following proviso be added:—

"Provided that the rent or rate of rent agreed upon shall not be less than the amount of rent or the rate of rent payable by the raiyat to his landlord."

Sir, to safeguard the interest of the landlord the above proviso should be added to section 48. Unless this safeguard is provided a raiyat by taking a salami from the under-raiyat would be allowed to let out the holding or a part of it to an under-raiyat at a lower rent and then he may abandon the holding. In such a case the superior landlord will be bound to take the rent so agreed under section 87 of the Act, provided he pays six times the rent as salami. To give an example: B, a raiyat intending to abandon the holding, takes a salami of Rs. 200 and sublets the entire holding consisting of ten bighas to an under-raiyat at a nominal rent of Re. 1. The rent of the holding was Rs. 20. Now after this subletting the raiyat abandons the land. The landlord in that case must accept Rs. 6 as salami (six times of Re. 1). If the raiyat had sold the holding by a kobala, the landlord would have got Rs. 50 as salami and Rs. 20 as rent. I, therefore, suggest that the rent should not be less than the rent payable by the raiyat. Under the circumstances I hope the House will see its way to accept my proposal.

The following motion was called but not moved :—

Rai HARENDRANATH CHAUDHURI to move that in clause 32, after the proposed new section 48, the following proviso be added :—

"Provided that the rate of such rent shall on no account be less than that of the rent payable by the raiyat to his landlord."

Khan Bahadur MUHAMMAD ABDUL MUMIN: The present position with regard to the rent of the under-raiyat is as the mover has explained it. Now, the rent of the under-raiyat cannot exceed by more than 50 per cent. the rent of his superior landlord, or, in other words what his landlord pays in his turn to his landlord, in certain cases 50 per cent. and in certain cases 25 per cent. But the reason why this restriction against the initial rent of the under-raiyat was abolished by the proposed amending Bill is as follows:

In the existing Act although there is a protection against rack-renting yet that gave them nothing because the under-raiyats have no status, and, if an under-raiyat did not agree to pay the rent which his landlord claimed from him, the result was that he was ousted. Therefore that restriction in the Act was really a dead letter. During the course of settlement operations it was found that if the rent of an under-raiyat was reduced under this Act the result was that on the following day the man was ousted from the land. And in many cases it was difficult to ascertain what the actual rate of rent for the particular plot of land sublet to an under-raiyat was, for instance, majority of under-raiyats hold only a portion of the holding and it is not possible to ascertain whether the plot has been let out at a rate of rent which, taking the particular plot of land, had reached the limit as given in the law. Now, under the proposed Bill we are going to give some

status to the under-raiyat; under certain conditions the under-raiyat will not be liable to be evicted. It is only fair that the initial rent as agreed between him and his superior landlord should not be limited by any other consideration than the consideration of demand and supply.

The hon'ble mover has just referred to a question of contract in this matter. I would like to ask him what restriction there is in the case of the initial rent of the raiyat when he takes a lease of a land from the zamindar. Under the existing law as well as in the Amendment Bill there is no such restriction. Therefore, to bring the rent of under-raiyats in a line with the raiyat, it is proposed not to have any restriction. We have got other sections in the Bill in which further enhancement has been limited but the initial rent of the under-raiyat has not been restricted. Another objection of the restriction will be that when a raiyat wants to sublet his land to an under-raiyat, if he knows that the rent will not be realised, he will take heavy salami. Therefore, the hardship of rack-renting which the mover of the amendment wants to get removed will really increase, instead of being put a stop to. For these reasons I oppose the amendment of Khan Bahadur Azizul Haque. As regards the amendment moved by Maharaj Kumar Sris Chandra Nandy, I am not opposed to it in principle. He wants that the initial rent of an under-raiyat should not be less than the rent of his superior raiyat. The difficulty in this case is the impracticability of ascertaining whether the rent which is settled for a part-holding is or is not less than the initial rent. If that is ascertained and supposing if we embody these provisions in the Act, what will be the practical result? Supposing there is a contract in which the initial rent is less, the only person who is affected theoretically is the superior landlord, but really he is not affected, because if the raiyat's holding is sold, he would not be bound by it. I think the amendment is unnecessary and would have no effect on the law. I therefore oppose it.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Regarding the amendment of Khan Bahadur Azizul Haque, I would only point out this; he wants to introduce this proviso after section 48. Now let us see whether this proviso will practically help us in any way in achieving his object. Section 48 as it stands in the present Act reads thus:

"The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely, *(a)* when the rent payable by the under-raiyat is payable under a registered lease or agreement 50 per cent., and *(b)* in any other case 25 per cent."

My friend seeks to introduce practically the same provision with this change, namely, that for 50 per cent. he puts 30 per cent. and as regards 25 per cent. he would let it remain as it is. The section as it stands practically is not in operation. It generally happens that the

raiyat usually lets out a certain portion of the land to the under-raiyat, and with regard to that portion he makes an arrangement with the under-raiyat under which the under-raiyat holds the land at a rent far exceeding the percentage as laid down in section 48, and that section 48 is absolutely of no help to the under-raiyat. The same difficulty remains with regard to the amendment moved by Khan Bahadur, because we find what he really wants to restore in the law is in practice absolutely of no avail to the under-raiyat. That is indeed one of the reasons why section 48 has been repealed. It has been laid down that the raiyats and the under-raiyats are quite free to come to any settlement as regards the settlement of the initial rent. Therefore, the amendment of Khan Bahadur Azizul Haque will in no way improve the situation, and there is no reason why we should accept it.

Mr. SARAT C. BOSE: I oppose the amendment moved by Maharaj Kumar Sris Chandra Nandy. I cannot understand how we are going to curb the power of contract by parties. Secondly, this amendment deals with the rent that it shall not exceed a certain proportion. It is known to everyone that, when a particular land is settled, there are two things that regulate, viz., it is the rent as well as the salami and premium. If the salami is high, the rent is made low; and if the rent is made high the salami is made low; As it is then what is the use of having a fixed rent? If we make it that the rate of rent should be in certain proportion, then the landlord will compel the under-raiyat in such a case to pay a very high salami so that the very object which the mover of this amendment has in view will be frustrated by the actual dealing between the under-raiyat and his landlord and the result will be that there will be no course left open to control the landlord in the any way. We all know that under-raiyats have become more influential than the raiyats. The under-raiyats are actually the cultivators of the land. They are far better off than the occupancy raiyats and therefore we have nothing to prevent the under-raiyats from getting the upper hand. In any case it will be impossible to control the contractual rights of the parties or the liberty to form that contract as they like, regard being had also to the fact that it is the raiyat and the under-raiyat who are not the two parties that have taken to this course. There are a series of contractual relations among them. When everybody is going to have the liberty of contract, I do not find any reason why the poor raiyat and the under-raiyat should be fettered in the matter of their contracts between one another.

Maulvi NURUL HUQ CHAUDHURI: This House is aware that only a few days ago, we agreed that the landlord would be able to acquire an occupancy right. The question, therefore, is: What would happen if the landlord acquires an occupancy right? In most cases he will have no other option but to resettle the land with the old outgoing

raiyats. In that case the parties, as has been argued, will not be on an equal footing so far as contractual relationship is concerned. The landlord in the case which I have assumed has probably purchased the holding; and, if we are going to give the landlord full freedom of contract, there will be nothing to prevent the landlord from imposing his own terms. He will look upon the tenant, whose status is now reduced, as the most proper subject of his exploitation; and after having acquired the occupancy right himself, the landlord may not be willing not only not to part with the occupancy right but may reduce the status of the tenant to that of a bargadar. In that case if we do not give the actual cultivator some amount of protection as regards the amount of rent, the result will be that he will be subjected to very high extortion. After having accepted the principle that so far as it lies in our power, we shall prevent by all possible means the acquisition of the occupancy right by the landlord, we have no other alternative but to prevent the landlord from driving any hard bargain against the tenant. On this view of the matter, I hold that the law should give some protection to the under-raiyat. As a matter of fact there will be very few cases in which a person after having been in possession of the land, would be willing to settle it with the under-raiyat. Usually the manner in which under-raiyats will be created will be by means of sale for arrears of rent and for other forms of indebtedness and once we admit that the question should be decided by reference to those cases where the raiyat will be reduced to the status of an under-raiyat. If we cannot give him back the status of raiyat it should be our endeavour to see that he the old outgoing raiyat gets some protection by way of the limitation of the rent which the landlord can impose. The question therefore is not between the raiyat and the under-raiyat but actually it is a question between the landlord and the actual cultivator. I therefore support the amendment which has been moved by my friend, Khan Bahadur Azizul Haque.

The Hon'ble Sir PROVASH CHUNDER MITTER: Mr. Mumin has clearly explained the reasons as to why amendment moved by Khan Bahadur Azizul Haque cannot be accepted and I do not want to take up the time of the Council by repeating the reasons. As regards the amendment of Maharaj Kumar Sris Chandra Nandy, we do not think that this amendment will be of much use but if this House want to press the amendment in order to remove all causes of suspicion, we are prepared to accept it.

The following motion was then put and lost:—

"That in clause 32, after the proposed new section 48, the following proviso be added, namely:—

'Provided such rent shall not exceed the rent payable by the landlord by more than thirty per cent. when the under-raiyat holds his lands under a registered lease and twenty-five per cent. in all other cases.'"

The following motion was then put and agreed to:—

That in clause 32, after the proposed new section 48, the following proviso be added:—

"Provided that the rent or rate of rent agreed upon shall not be less than the amount of rent or the rate of rent payable by the raiyat to his landlord."

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in the proposed section 48B (*1*), proviso, line 3, for the word "four" the word "three" be substituted.

Sir, the purport of my amendment is that the rent of an under-raiyat can be enhanced by a written registered contract provided that the rent shall not be enhanced so as to exceed by more than three annas in the rupee the rent previously paid, except in certain cases which are mentioned. It appears from the Bill that the rent of an under-raiyat could be increased by four annas in the rupee. In my amendment, I suggest that it should be three annas. There is another amendment which suggests "two annas," and I shall be very glad to support it. Sir, I do not know what the temper of the House will be in regard to these amendments, as it seems to oscillate even in the course of half a minute. I suggest that there is no reason why when an under-raiyat is admitted to be tenant by law he has to pay a higher rate than a raiyat. I think it is surely asking him to pay too much.

Mr. A. K. FAZL-UL HUQ: I beg to move that in clause 32 in the proposed section 48B, in line 3 of the proviso, for the words "four annas" the words "two annas" be substituted.

Sir, I do not wish to make any speech on this amendment. I have suggested two annas for four annas as I think the latter would cause great hardship to the poor tenants.

Mr. B. E. J. BURGE: Sir, I formally oppose these amendments. The Bill proposes four annas not because there is any magic in the words "four annas," but because four annas is a reasonable amount, as the rent of an occupancy raiyat or a raiyat may be enhanced by two annas; and it is proposed to give the raiyat a slight benefit over the under-raiyat. But there is no serious objection from this side of the House whether any of these two amendments be carried: it is left entirely to the House to say what they want.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and lost.

The motion of Mr. A. K. Fazl-ul Huq was then put, and a division taken with the following result:—

AYES.

Abbott, Mr. E. G.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Haque, Khan Bahadur Maulvi Azizul
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Husain, Khan Bahadur Maulvi Syed Naqbul.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Mukerji, Mr. S. C.
Nazimuddin, Mr. Khwaja.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-Rauf, Maulvi Syed Abdur.
Ray Chaudhuri, Mr. K. C.
Sarker, Rai Sahib Rebati Mahan.
Suhrawardy, Mr. H. S.
Wordsworth, Mr. W. C.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Premetha Nath.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nandy, Maharaj Kumar Sris Chandra.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Rahman, Mr. A. F. M. Abdur-
Rajkat, Mr. Prosanna Deb.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Ray, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.

The Ayes being 27, and the Noes 39, the motion was lost.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 32, in the proviso to the proposed section 48B (*1*), the words "except in the following cases, namely," and clauses (*i*) and (*ii*) of the proviso shall be omitted.

Sir, at one moment I thought that I was in good company and that my friend, Mr. Chakravarti, would support me; I do not know what offence I have committed, because I find that he has not seen the wisdom of moving this amendment but has remained silent. My friend, Naliniranjan Sarker, for whom I have the highest respect, is becoming exhilarated on the fact that his party is opposing the motions I am proposing. If we have committed any offence, it is an offence to vindicate the rights of the tenants, it is an offence to stand by the rights

of the people, it is an offence to feel for the poor who have no motor-cars, it is an offence to look with sympathy on those who are tilling the soil. Sir, I will welcome the day when.....

Mr. PRESIDENT: I will not allow you to go into that.

Khan Bahadur Maulvi AZIZUL HAQUE: Very well, Sir. I move the amendment for the simple reason that the question of the enhancement of an under-raiyat comes in under two circumstances, viz., first when an under-raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of his holding wholly or partly at the cost of the raiyat and to the benefit of which the under-raiyat is not otherwise entitled; and secondly when an under-raiyat has held his land at a specially low rate of rent in consideration of his cultivating a particular crop. These two provisos are taken bodily from section 29 of the Bengal Tenancy Act. I think the House will agree with me that, so far as these two provisos are concerned, they were incorporated in the Bengal Tenancy Act in the interests of indigo plantation. Indigo plantation was rampant in this country, people really paid a lower rate of rent on the ground that they cultivated indigo. It was thought necessary in 1885 that these provisos should be embodied in the Act, but circumstances have changed since. I would ask the Government whether they can find any specific instance where an under-raiyat binds himself to pay an enhanced rate in consideration of any improvement effected in his holding, or where an under-raiyat has held at a specially low rate of rent. Certainly there seems no justification for these two clauses. Only a few minutes ago, I think, Mr. Sachse or some other official member said that certain clauses which I suggested were not at all needed. These clauses are not needed and shall be left out.

Mr. P. C. BASU: On a point of order, Sir. Is the hon'ble member entitled to refer to any conversation which he had with another member in the lobby?

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I am sorry my friend, Mr Basu, did not hear me; but if my friend absents himself from the House and attends it for the purpose of creating occasional mirth, I have nothing to say. I did not refer to any conversation in the lobby, but to one which took place in this House and which was heard by everybody.

Sir, I may also put forward the same argument that these two clauses are unnecessary because any occasion will hardly arise for their application. On the other hand, they will bring in complications in the law.

MR. PRESIDENT: The Leader of the House has suggested to me that I should henceforth continue our meetings till 7-15 p.m. I have already told some members that I would adjourn the House to-day at 6-30 p.m. and so I cannot continue the meeting to-day till 7-15 p.m. I should, however, like to know if the members have any objection to continuing the meetings of the House till after 6-30 p.m. from to-morrow. (Cries of "No," "No.")

I take it that the House is for adjournment at 6-30 p.m.

Adjournment.

The Council was then adjourned till 2-45 p.m. on Tuesday, the 21st August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Tuesday, the 21st August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, Minister, and 106 nominated and elected members.

Starred Questions

(to which oral answers were given).

Muhammadan Assistant and Sub-Assistant Surgeons.

*65. **Mr. SYED MD. ATIQULLAH:** (*a*) Will the Hon'ble Minister in charge of the Department of Local Self-Government (Medical) be pleased to state the percentage of Muhammadan Assistant and Sub-Assistant Surgeons employed under the Government of Bengal at present?

(*b*) Will the Hon'ble Minister be pleased to state whether there is any Government Circular for the recruitment of Muhammadans in the Medical Service?

(*c*) Will the Hon'ble Minister be pleased to state—

(*1*) how many Sub-Assistant Surgeons have been promoted to the rank of Assistant Surgeons in Bengal during the last 25 years, and

(*2*) how many of them are Muhammadans?

Mr. R. N. REID: (*a*) Muhammadan Assistant Surgeons 5·23 per cent. Muhammadan Sub-Assistant Surgeons 6·54 per cent.

(*b*) Yes.

(*c*) The practice of promoting Sub-Assistant Surgeons to the rank of Assistant Surgeons begun in 1915—

(*1*) there have been 10 such promotions since then;

(*2*) one of them was a Muhammadan.

Mr. SYED MD. ATIQULLAH: Will the hon'ble member be pleased to state if any percentage of Muhammadans is stated in the circular?

Mr. R. N. REID: I must ask for notice of that question.

Détenu Ashutosh Bhattacharjee.

*66. **Mr. D. N. ROY:** Will the Hon'ble Member in charge of the Political Department be pleased to state—

(*i*) whether détenu Srijut Ashutosh Bhattacharjee is now in village domicile, and

(*ii*) whether the Government proposed to release him in the near future?

MEMBER in charge of POLITICAL DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (*i*) Yes.

(*ii*) Government are not prepared to publish their intentions.

Internees and externees.

*67. **Mr. KIRAN SANKAR ROY:** Will the Hon'ble Member in charge of the Political Department be pleased to lay on the table a statement showing on the 8th August, 1928

(*i*) the number of persons who are in village internment in Bengal;

(*ii*) the number of persons in home internment;

(*iii*) the number of persons externed from Bengal and the place of their stay; and

(*iv*) the number of persons who have been externed from certain parts of Bengal, and their place of stay?

The Hon'ble Mr. W. D. R. PRENTICE: A statement is laid on the table showing the number of persons under each category. Government are not prepared to publish the names of the places of detention or externment.

Statement referred to in the reply to starred question No. 67 regarding number of détenus under the Bengal Criminal Law Amendment Act on the 8th August, 1928.

(*i*) In village domicile—7.

(*ii*) In home domicile—4.

(*iii*) Externed from Bengal—1.

(*iv*) Externed from or confined to certain areas in Bengal—2.

Détenu Jyotish Chandra Ghose.

*68. **Mr. D. N. ROY:** Will the Hon'ble Member in charge of the Political Department be pleased to state—

(*i*) the present condition of the health of Srijut Jyotish Chandra Ghose; and

(*ii*) whether the Government propose to release him in the near future?

The Hon'ble Mr. W. D. R. PRENTICE: (*i*) Government have no recent information regarding his health. In July it was reported to be indifferent.

(*ii*) Government are not prepared to publish their intentions.

Srijut RADHA GOBINDA RAY: Will the Hon'ble Member be pleased to state why Government are not prepared to publish the reasons for not releasing the political prisoners?

The Hon'ble Mr. W. D. R. PRENTICE: I have already said that Government are not prepared to publish their intention.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to tell us what exactly he means by saying "indifferent"?

The Hon'ble Mr. W. D. R. PRENTICE: There is a catalogue of ailments, none of which are in themselves serious.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state what are the exact ailments from which the détenu is suffering?

The Hon'ble Mr. W. D. R. PRENTICE: I will read them out. Dyspepsia, pyorrhœa with receding gums, tongue slightly coated, moist and flabby, probably fatty heart, chronic inflammation of both testicles, tendency to varicocele.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state if dyspepsia and pyorrhœa are diseases which require looking after by Government.

Mr. PRESIDENT: I do not allow that question.

Mr. D. N. ROY: On a point of information. If any allowance is made to a détenu under what budget head does that fall?

The Hon'ble Mr. W. D. R. PRENTICE: I must ask for notice.

Unstarred Question.

(Answer to which was laid on the table).

Supply of publications required by Government.

58. Babu MAHENDRA NATH MAITI: (*a*) Will the Hon'ble Member in charge of the Department of Finance be pleased to state whether it is a fact that Messrs. Thacker, Spink & Co., of Calcutta, have been given the *sole right* to supply to the Government of Bengal books, periodicals and other publications published outside India for the current financial year?

(*b*) Is it a fact that the firm will be paid a commission of 7½ per cent. over and above the trade prices charged by the publishers for the publications *plus* the charges for transit, packing and insurance?

(*c*) Is it a fact that even in the case of books required urgently and proposed to be purchased from any other firm in India, option must first be given to this firm to supply the books within a specified time before an order is placed elsewhere?

(*d*) Is it a fact that orders for the supply of publications used to be placed with the High Commissioner for India before this agreement?

(*e*) If so, will the Government be pleased to state the reasons which induced them to make this change?

(*f*) Will the Hon'ble Member be pleased to state whether tenders from Indian and European firms were called for before giving this firm a monopoly for the supply of publications?

(*g*) If the answer to (*f*) is in the negative, will the Hon'ble Member be pleased to state the reasons for this innovation?

(*h*) Is it a fact that the firm charges a higher rate per shilling for publications outside India than Indian firms?

(*i*) Is it a fact that the bulk of books ordered by the Government of Bengal are for the use of Government educational institutions?

(*j*) Is the Hon'ble Member aware that the firm in question are not educational booksellers, and that the vast majority of educational institutions in Bengal never placed their orders for books with the firm in question?

(*k*) Is the Hon'ble Member aware that this was the case even with Government institutions, before orders were placed with the High Commissioner?

(*l*) Was the Hon'ble Minister for Education consulted before the monopoly for the supply of books was given to this firm?

(*m*) If the answer to (*l*) is in the negative, will the Hon'ble Member be pleased to give reasons why this was not done?

(*n*) Will the Hon'ble Member be pleased to state when the present contract with the firm comes up for renewal?

(*o*) Do the Government propose to call for tenders in such a contingency?

MEMBER in charge of DEPARTMENT of FINANCE (the Hon'ble Mr. A. Marr: (*a*) Yes.

(*b*) Yes.

(*c*) Yes.

(*d*) Yes.

(*e*) Under the arrangement with the High Commissioner, 2 per cent. departmental charges were paid. Under the present arrangement these charges are saved. The policy referred to in the reply to question (*g*) was given effect to.

(*f*) No.

(*g*) In reply to unstarred question No. 10 asked by Mr. F. E. James on the 16th February, 1926, the following reply was given: "Government are prepared to consider tenders by local booksellers for the supply of publications required by Government." The firm of Messrs. Thacker, Spink & Co. made a proposal in August, 1927. No other firm has made a tender.

(*h*) Under the agreement conversion is to be made at the current rate of exchange.

(*i*) Many of the books ordered are for such institutions.

(*j*) No.

(*k*) No.

(*l*) The Education Department was consulted.

(*m*) Does not arise.

(*n*) The present agreement is for one year from the 1st April, 1928.

(*o*) This will be considered in due course.

Khan Bahadur Maulvi AZIZUL HAQUE: Will the Hon'ble Member be pleased to state whether any advertisement was issued in any papers in Calcutta or anywhere else?

The Hon'ble Mr. A MARR: No advertisement was issued. Invitation to tender was issued in answer to a question asked by Mr. James.

Khan Bahadur Maulvi AZIZUL HAQUE: Will the Hon'ble Member be pleased to reconcile his answer to questions (*b*) and (*e*)?

The Hon'ble Mr. A. MARR: As far as I remember, 2 per cent. was in addition to the High Commissioner's charges. But if the member would like fuller information, I can give it to him later.

Srijut RADHA GOBINDA RAY: Will the Hon'ble Member be pleased to state whether tenders were called for from other firms in Calcutta?

The Hon'ble Mr. A. MARR: No tenders were called for.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to tell us why no tenders were called for?

The Hon'ble Mr. A. MARR: As I have said before, in answer to a question asked by Mr. James firms were invited to present tenders.

GOVERNMENT BILL.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

Maulvi NURUL HUQ CHAUDHURI: On a point of information. I sent notice of an amendment relating to clause 32 in the proposed section 48C (2) to the effect that the main clause be omitted. I do not find that in the printed list that amendment has been included. May I know whether in these circumstances I am competent to move that amendment?

Mr. PRESIDENT: I will make enquiries and let you know later.

The amendment moved by Khan Bahadur Maulvi Azizul Haque yesterday is now open to discussion.

Mr. B. E. J. BURGE: I oppose the amendment moved by Khan Bahadur Azizul Haque. The amendment as proposed by him proposes to delete the provisos to section 48B (*1*). Those provisos are simple but sufficient and follow the line of the proviso to section 29. Khan Bahadur Azizul Haque said that they would be of very little use. Even if it be so, as we are giving the under-raiyat a definite position under the present law, these provisos are necessary and should be retained for the benefit of the under-raiyats, whether they are used or not is immaterial.

The following motion was put and lost:—

"That in clause 32, in the proviso to the proposed section 48B (*1*), the words 'except in the following cases, namely,' and clauses (*i*) and (*ii*) of the proviso shall be omitted."

The following motion was called but not moved:—

Maulvi SYED NAUSHER ALI to move that in clause 32, proviso (*ii*) to sub-section (*1*) of the proposed section 48B shall be omitted.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 32 in the proposed section 48B (*1*), proviso (*ii*), line 5, for the words "convenience of the raiyat" the words "convenience of his landlord" shall be substituted.

This a technical amendment. I think it is necessary because there may be an under-raiyat under another under-raiyat. So, if the words in the section be only "convenience of the raiyat" I think complications may arise. Therefore if we substitute the words "convenience of his landlord" whether he be a raiyat or an under-raiyat in place of the words "convenience of the raiyat" the difficulty can easily be obviated.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): It will save the time of the House if I tell the mover that his amendment does not make much difference. The words here are "the convenience of the raiyat" but the raiyat is the landlord of the under-raiyat. The mover's amendment is "convenience of his landlord" so that will be the convenience of the raiyat. So we have no objection to the acceptance of this amendment.

The motion of Maulvi Tamizuddin Khan was then put and agreed to.

Mr. PRESIDENT: Maulvi Nurul Huq Chaudhuri, I understand that a letter was written to you and that you were duly informed

that the amendment to which you referred, viz., the one relating to clause 32 in the proposed section 48C (2), was not allowed by me, because I thought that your amendment had the effect of a negative vote.

Maulvi NURUL HUQ CHAUDHURI: On a point of order. Cannot an amendment to this particular clause be separately put?

Mr. PRESIDENT: That is not the point. You really want to move an amendment which was not allowed because it would have merely the effect of a negative vote. According to the rules no such amendment can be moved.

The following amendments were called but not moved:—

Babu NAGENDRA NARAYAN RAY to move that in clause 32 in the proposed section 48B (1) after clause (*ii*) of the proviso the following shall be added, namely:—

"Nothing hereinbefore contained shall debar a landlord of an under-raiyat to recover rent at a rate realised for three years immediately preceding the suit if the enhancement has not exceeded by more than four annas in the rupee the rent previously payable and also if there had been no enhancement already within 15 years previous to the suit."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, to move that in clause 32 in the proposed section 48B (2), line 3, for the word "fifteen" the word "nine" shall be substituted.

Babu AKHIL CHANDRA DATTA to move that in clause 32 for the proposed section 48C, the following shall be substituted, namely:—

"48C. An under-raiyat shall not be liable to be ejected by his landlord except—

(*a*) on the expiration of the term of a written lease,

(*b*) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord:

Provided that an under-raiyat who has been in continuous possession of the lands comprised in his holding for a period of 20 years

whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, and has his homestead situated within the holding, shall not be liable to be ejected from such holding except on the ground—

(*a*) that he has failed to pay an arrear of rent; or

(*b*) that he has used the land in a manner rendering it unfit for the purpose of the tenancy; or

(*c*) that he has broken a condition consistent with the Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected."

Babu JOGINDRA CHANDRA CHAKRAVARTI and Maulvi KADER BAKSH to move that in clause 32, in the proposed section 48C, clause (*a*) shall be omitted.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 32, in the proposed section 48C (*a*) in line 2, after the word "rent" the words "whether for a year or for continuous four years" shall be inserted.

Srijut BIJAY KUMAR CHATTERJEE to move that in clause 32, in the proposed section 48C (*a*), proviso, line 4, for the words "and not of produce" the words "and in kind" shall be substituted.

Babu ROMES CHANDRA BACCHI: I beg to move that in clause 32, in the proposed section 48C (*a*), in the proviso, line 5, after the word "pays" the words "within one month from the date of the decree" be inserted.

The section as it stands is "that an under-raiyat shall be liable to ejectment on one or more of the following grounds, namely, on the ground that he has failed to pay an arrear of rent, provided that, if the under-raiyat is one whose rent is payable in terms of cash and not of produce and he pays through the court all arrears up to date together with such interest and damages as the court may award he shall not be liable to ejectment on account of such arrears. I have proposed that after the word "pays" the words "within one month

from the date of the decree" be inserted. The effect of this amendment, if accepted, will be to give an under-tenant a time of one month in which he may deposit to the court the amount of arrear rent and damages as the court may award. In the proposed section no time is fixed for the deposit of such arrears and it may be argued that the court has not the power to grant the under-raiyat any time as the law does not permit it and the effect will be that he will have to pay the arrears and damages with interest just at the close of hearing. Otherwise he will be liable to ejectment. This will be very hard for the under-tenants so I propose that the time of one month be allowed.

Rai MAHENDRA NATH GUPTA Bahadur: I beg to oppose this amendment. I think it is based on a missapprehension. The proviso in the Bill does not shut out the operation of section 66 (2) of the Bengal Tenancy Act and a time is prescribed there within which the money may be paid, that is, when the decree is put into execution. That time under the present law is 15 days and it has been proposed to extend it to one month. The proviso under section 48C refers to the stage in which the case of ejectment is being heard and, when the case is being heard, the tenant comes forward and says that he is prepared to pay all the arrears, costs, etc. It is then a matter for the discretion of the court, namely, the time which might be allowed when the case is proceeding. It is for this reason that no time is mentioned. The repeat, the tenant will have time, if there is application for time, and before the execution of the decree he will have again one month's time. The stage mentioned in the proviso to section 48C is the stage when the case is being heard in court. Therefore no mention of time is necessary. It is a matter entirely for the discretion of the Court.

The motion of Babu Romes Chandra Bagchi was then put and lost.

The following amendment was called but not moved:—

Mr. SACHINDRA NARAYAN SANYAL to move that in clause 32 after the proposed section 48C (*a*) the following proviso shall be added after the existing proviso, namely:—

"provided also the under-raiyat who pays all arrears together with all damages being twenty-five per cent. of the arrears and the cost of suit within a period of one month after the date of service of summons of the suit."

Khan Bahadur Maulvi EKRAMUL HUQ: I beg to move that in clause 32, in the proposed section 48C (*b*), line 2, after the word "which" the words "Substantially reduces the value of the holding and" shall be inserted.

I beg to point out that the law as it stands simply says that an under-raiyat shall be liable to ejectment on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy. This unfitness of the holding may give rise to different interpretations and a landlord or a tenant, who wishes to eject an under-raiyat, can do so on a very flimsy ground that an under-raiyat has rendered the holding unfit in a way for the purposes of tenancy. So there should be some safeguard which should protect the right of under-raiyats from ejectment and the words I want to insert will to some extent protect these under-raiyats from ejectment. For instance, if an under-raiyat happens to build a small temple on a few chattaks of land or a mosque, the tenant may like to eject the under-tenant and say that you have used the land in a manner which has rendered it unfit for tenancy with the result that the under-raiyat will be liable to ejectment. This sort of ejectment cannot be tolerated and the tenant should not be allowed to object to an under-raiyat's using the land in whatever way he likes. With these words I present my amendment for the consideration of the House and I trust that the Hon'ble Member for Government will see the justice of this amendment and accept it.

Mr. B. E. J. BURGE: I oppose this amendment. There the wording is unsatisfactory. What does the Khan Bahadur mean by the phrase "substantially reduces the value of the holding.". It is a phrase which is very difficult to interpret. I do not think it will add anything to the present law, as it is worded, which will benefit an under-raiyat. The clause as it is seems to me to cover the intention which the Khan Bahadur endeavours to put in the section by his amendment.

Khan Bahadur Maulvi EKRAMUL HUQ: In case Government would like me to amend my motion in any particular fashion I am quite prepared to modify it.

Mr. B. E. J. BURGE: I cannot accept the amendment.

The motion of Khan Bahadur Maulvi Ekramul Huq was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Asizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Premetha Nath.
Banerjee, Mr. A. C.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hegg, Mr. G. P.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sanhoe, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 17 and the Noes 59 the motion was lost.

The following motions were called but not moved:—

Babu AMARENDRA NATH GHOSE to move that in clause 32 in the proposed section 48C (*b*) in line 3 after the words "the purposes of the tenancy" the words "and deteriorates its value" shall be inserted.

Babu ROMES CHANDRA BAGCHI to move that in clause 32, in the proposed section 48C (*c*), line 3, after the words "a written lease" the words "for a term" shall be inserted.

Mr. W. H. NELSON: Sir, I beg to move the amendment which stands in my name, namely—

That in clause 32, in the proposed section 48C, after clause (*c*), the word "or" shall be omitted, and after clause (*d*), the following sub-clause shall be inserted, namely—

"or

(*e*) on the ground that he does not agree to pay the rent determined by the Court under sub-section (*4*) of section 48D."

Sir, it is merely a drafting improvement. Section 48C says that "an under-raiyat be liable to ejectment on one or more of the following grounds, and not otherwise....." Well, section 48D is one method by which an under-raiyat may be ejected, and, therefore, it ought to be mentioned in section 48C.

The motion was put and agreed to.

Maulvi ASIMUDDIN AHAMAD: I move that in clause 32, in the proposed section 48C (*d*), in lines 2 and 3, for the words "six months" the words "one year" shall be substituted.

He spoke in Bengali, in support of his motion.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I formally oppose this amendment. Six months is the usual period and has worked saitsfactorily everywhere. It is quite sufficient.

Babu AKHIL CHANDRA DATTA: Sir, I beg to support this motion for the reason that under the existing law the requisite period of notice is a minimum of one year, and I see no reason why this right of the under-raiyats should be curtailed.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, we shall be quite prepared to leave it to the vote of the House, Government members remaining neutral.

The motion of Maulvi Asimuddin Ahamad was then put and agreed to.

Babu ROMES CHANDRA BACCHI: Sir, in the absence of Babu Amulya Chandra Datta, may I have your permission to move this amendment which stands in his name?

Mr. PRESIDENT: Yes, you have my permission to do so.

Babu ROMES CHANDRA BACCHI: Sir, I beg to move that in clause 32, in the proposed section 48C (*d*), lines 5 and 6, after the words "under a written lease" the words "for a terms" shall be inserted.

Sir, as the proposed section is framed in clause (*c*), the case of under-raiyats holding under a lease for a term is contemplated, and in clause (*d*) those cases under no lease are contemplated. But there is a class of under-raiyats who hold under leases for an indefinite term. As the law now stands. High Court rulings under section 85 have laid it down that leases for an indefinite term are to be considered to be no leases at all. But as section 85 is going to be repealed, rulings under that section would no longer govern such cases. To avoid that anomaly, I propose this amendment, which, if accepted, would mean to cover all cases whether holding under leases for an indefinite term or holding under no lease at all. So, I hope this amendment will be accepted.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I oppose this amendment. The mover of the amendment wants that after the words "under a written lease" we should add the words "for a terms." It is not very clear to me why he wants the addition of these words. Section 48C (*d*) governs those cases in which there are no leases and sub-section (*c*) those in which there are leases. It will not alter the situation in any way whether there is a lease for a term or a lease for an indefinite period. If there is a lease for a term sub-section (*c*) governs it, it falls under proviso (*i*) (*1*). Therefore, I think, this amendment is not only unnecessary but it will lead to confusion. For these reasons, Sir, I formally oppose the motion.

The motion of Babu Romes Chandra Bagchi was then put and a division taken with the following result:—

AYES.

Bagchi, Babu Rames Chandra.
Banerjee, Dr. Pramathanath.
Banerjee, Babu Premeetha Nath
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Bose, Babu Bejay Krishna.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjee, Srijut Taraknath.
Pal Choudhuri, Mr. Ranjit.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Nalinirenjan.
Sen, Srijut Nagendra Nath.

NOES.

Abbott, Mr. E. S.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Dash, Mr. A. J.
Eddis, Mr. A. McD.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Husain, Khan Bahadur Maulvi Syed Maqbul.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
McCluskie, Mr. E. T.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Pravash Chunder.
Murgin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rakhit, Mr. Prosanna Deb.
Rauf, Maulvi Syed Abdur.
Reid, Mr. R. N.
Roy, Mr. Bijoy Prasad Singh.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Khan Sahib Abdus.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 26 and the Noes 59, the motion was lost.

Mr. PRESIDENT: Our next move will be somewhat clumsy because I propose to have one discussion on amendments Nos. 830, 851—856, 860-861 and 863—865, which are more or less identical.

This move will seem clumsy because these amendments are not properly arranged on the agenda paper.

Mr. BIJOY PRASAD SINGH ROY: The amendment that stands in my name divides itself into two parts, namely, the omission of the proviso and the omission of the Explanation at the end of the section. May I have your permission, Sir, to move only for the omission of the Explanation as I do not want to proceed with the omission of the proviso.

Mr. PRESIDENT: You do not want to move the amendment as it stands?

Mr. BIJOY PRASAD SINGH ROY: No Sir, I only want to move the omission of the Explanation.

Mr. PRESIDENT: I think the best thing for you would be to move the amendment as it stands because I do not like, unless it is an exceptional case, to accept an amendment on short notice and in this case the notice is extremely short.

Khan Bahadur MUHAMMAD ABDUL MUMIN: May I intervene at this stage and say that amendment No. 863 will answer the purpose. I think it would be better for him to speak on No. 863.

Mr. PRESIDENT: It is for him to decide.

Mr. BIJOY PRASAD SINGH ROY: I beg leave of the House to withdraw the amendment standing in my name.

The following motion was then, by leave of the Council, withdrawn:—

"That in clause 32, the proviso to clause (*d*) of the proposed section 48C and the Explanation at the end of the said section shall be omitted."

Maulvi NURUL HUQ CHAUDHURI: I rise to a point of order, Sir. I beg to point out that amendment Nos. 863–865 has a negative force as they want the total omission of the Explanation. Will it not be ruled out, Sir, according to the ruling which you gave a few minutes ago? I refer to your ruling, Sir, in not allowing me to move the omission of sub-clause (2) of clause 32 on the ground that it had a negative force. Will not the same ruling apply here also?

Mr. PRESIDENT: You are mistaken. Your amendment which was ruled out of order is quite different from the one you are now referring to. This one aims at the omission of a certain part only, viz., the Explanation.

Maulvi NURUL HUQ CHAUDHURI: May I offer a personal explanation, Sir?

Mr. PRESIDENT: No. This is not a case in which personal explanation is at all necessary or required.

The following amendments were called but not moved:—

Babu AKHIL CHANDRA DATTA, Babu JOGINDRA CHANDRA CHAKRAVARTI, Rai SATYENDRA NATH ROY CHOUDHURI Bahadur, and Maulvi KADER BAKSH to move that in clause 32, clause (*ii*) of the proviso to the proposed section 48C (*d*) with the Explanation thereunder shall be omitted.

Srijut BIJAY KUMAR CHATTERJEE and Babu JITENDRA-LAL BANERJEE to move that in clause 32 in the proposed section 48C (*d*), proviso (*ii*) shall be omitted.

Babu AMARENDRA NATH GHOSE and Maulvi TAMIZUDDIN KHAN to move that in clause 32, in the proposed section 48C (*d*), in proviso (*ii*), in lines 8 to 11, the words "or by hired servants or with the aid of partners" and the "Explanation" shall be omitted.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: I beg to move that in clause 32, in the proposed section 48C the "Explanation" shall be omitted.

Sub-clause (*ii*) in the second proviso of section 48C and the Explanation thereunder are innovations on Select Committee's report. There may be justification for the introduction of (*ii*) but there is none for the Explanation. A raiyat may be restrained to determine his under-raiyat's right when he wanted to do it for profiteering—but he should not be restricted to some particular mode of enjoyment. It should never be the object of legislation to confine a particular class of persons to a particular mode of enjoyment of his right—there may be occasions, there may be circumstances over which a particular person may have no control to change his mode of enjoyment. For instance, a raiyat who has got his own cultivation after getting his ejectment decree dies leaving a widow only and there is no hired labour available at the time—but his neighbour who is cultivating

his own land is ready to cultivate the widow's land as bargadar. Would it be fair and equitable to restrict the widow to engage hired labour? If for instance after the decree is passed all the cattles of the raiyat dies and he is not in a position to purchase fresh cattles that year, would it be proper and just to restrict his mode of cultivation then?

This House has already accepted the principle that the cultivation by barga, adhi or bhag is not subletting except in very few cases which do not arise in the present case of new arrangement. Why then this temporary arrangement should be denied to a raiyat who may have occasion to resort to it besides if he has not sufficient lands for one plough the employment of hired labour with the provision of a plough and cattle will be a losing concern for the raiyat, whereas the cultivation by barga will be far more profitable for him.

3-45 p.m.

Mr. F. A. SACHSE: Sir, leaving aside under-raiyats with occupancy rights by custom, to whom section 48G gives all the rights of raiyats with occupancy rights, except that they are not protected interests and that they are not transferable, the proposed Act recognises two classes of under-raiyats—

(1) those admitted by the landlord to have a permanent and heritable right, and those who have been in possession of the land including a homstead thereon for 20 continuous years; and

(2) all other under-raiyats.

The former class cannot be ejected under section 48C (*c*) or section 48C (*d*); they can only be ejected under the sub-section (*a*) of section 48C on the ground that they have failed to pay an arrear of rent, or under sub-section (*b*) of that section on the ground that they have used the land in a manner which renders it unfit for the purposes of the tenancy.

The latter class can in addition be ejected under proviso (*ii*) to sub-section (*d*) of section 48C, that is to say, if the landlord requires the land for his own cultivation. This will be quite clear to you from paragraph 3 of the Statement of Objects and Reasons attached to the Bill and also from paragraph 5 of the report of Sir Nalini's Committee. If the amendment is accepted and the Explanation added to proviso (*ii*) is omitted, what will be the result? This would be fatal to the Bill. A bed is no good if you cannot lie on it. It does not matter what other rights an under-raiyat has got, if he is liable

to ejection at any moment. The Explanation is the only clause in the Act which will prevent under-raiyats of the lowest class, that is to say, those who have not been on the land for 20 years, from being turned out wholesale to be replaced by bargadars who, in 99 cases out of 100, will not be tenants at all owing to the revised definition of section 3 (3) which this House has accepted. What will happen is this. An under-raiyat is paying four rupees rent. By section 48B his rent cannot be enhanced to more than five rupees. The landlord-raiyat will ask for 8 rupees. If the under-raiyat refuses to pay, the landlord will turn him out and replace him by a bargadar. Possibly he will resettle the land vacated by the bargadar with the ejected under-raiyat as a bargadar. In the end all lands now cultivated by under-raiyats with occupancy rights by custom will be cultivated by bargadars whom the Act, as amended, will declare to have no rights at all—to be serfs, practically slaves. If we accept this amendment, I think we will be yielding too much to the interests of those people who have inherited raiyati holdings or who have bought raiyati holdings out of their savings, as lawyers and merchants. We cannot imagine the people who are proposing this amendment sitting in the fields and transplanting paddy. It is these people who are so anxious that cultivation by bargadars as well as by hired servants should be treated as cultivation by themselves. I think that the mover has made a mistake in referring to widows and that sort of people. There is nothing in the section to prevent the widows of bona fide cultivators from letting out their land to bargadars, or from changing the bargadars as often as they want to. The only thing we wish to prevent is that they should turn out a cash-paying under-raiyat and substitute a bargadar.

I therefore oppose the amendment.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, before proceeding further, may I make a submission about the order in which it will be convenient if these amendments be taken up? This question is intimately connected with that of homestead and the amendments relating to that question are Nos. 843, 844, 845(*a*) and 846. I submit that these may also be discussed along with the present question, because one has its relation to the other. Supposing some of the members are against one question but accept the other, it would, I think, be much better if the discussion and the voting take place on both the questions together.

Mr. PRESIDENT: I quite understand your point, but I do not think I should at this stage upset the discussion we are now having. Let this discussion go on but I will not put the amendment now before the House to vote till those that you have mentioned have been discussed. I shall get back to No. 831, which was left out, after

the present discussion is over and then proceed on. When we reach No. 843, I shall, as you suggest, have one discussion on amendments Nos. 843, 844, 845(*a*) and 846, which relate to the question of homestead. I shall then put to vote those amendments as well as amendment No. 865.

Babu JOGINDRA CHANDRA CHAKRAVARTI: We are discussing here the position of the under-raiyat in relation to the raiyat. Mr. Sachse has spoken about the lowest class of under-raiyats, that is, those who have not got a permanent and heritable interest in the land, nor those who have been in possession of the land for a continuous period of 20 years. The third class is those who hold the land without any lease. In the case of this class of under-raiyats, we find that a raiyat has the option of ejecting him under certain terms. One of these terms is as laid down in clause (*2*) (*ii*) of the proviso: that is, "unless the landlord has satisfied the court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid of partners." An Explanation comes along with this that "In this section and in section 48E cultivation by hired servants does not include cultivation under the system generally known as adhi, barga or bhag by persons who provide their own cattle and plough." The whole question, therefore, is as to whether it would be proper and fair that an Explanation like this should be inserted in this clause in order to impose a disability upon the raiyat to have his land cultivated by a bargadar, if it is necessary for him to do so. As my friend Rai Bahadur has submitted, there may be cases where a raiyat dies leaving his widow and children; they cannot carry on the cultivation by themselves and they are obliged to sublet the land to an under-raiyat for a certain number of years without a lease; then when the children come of age it may be necessary for them to take back the land for the purpose of getting paddy and not rent in cash. It is said that in these cases this clause in the section prevents them from having paddy from the land instead of rent in cash, and I think it would not be proper and fair to impose a condition like this in such cases. If he wants to cultivate it by letting it out to bargadars that would be an infringement of the law. I submit the position of the under-raiyat in relation to the raiyat seems to be only proper and fair. Having regard to the fact that a raiyat can have his land cultivated by hired servants or with the aid of partners or also with the aid of bargadars, I do not see how we can say very rightly that we should have this Explanation; viz., that cultivation by bargadar would not be a cultivation within the meaning of this section.

Maulvi SYED NAUSHER ALI: I shall give an explanation as to why I sent in this amendment. I never wished that this explanation

should be omitted and at the same time the other portion of this section should remain intact. In fact this amendment I sent in as a consequential amendment to my amendment No. 859, because if that amendment be accepted, this part will become redundant. That is why I sent in this amendment. But in view of the fact that I am not sure whether amendment No. 859 will be accepted or opposed, I am compelled to oppose this amendment.

Mr. PRESIDENT: Do you oppose your own amendment?

Maulvi SYED NAUSHER ALI: Yes, I do.

Maulvi TAMIZUDDIN KHAN: I rise to oppose this amendment. I also gave notice of an amendment which included the deletion of this Explanation along with certain other things. I do not know if clause (*ii*) of the proviso will be deleted and what the opinion of the House will be as to that. Before we decide that, we cannot give up this Explanation, because this Explanation explains a very necessary thing. In proviso (*ii*) we get the words "cultivation by hired servants or with the aid of partners." Unless there is this Explanation in the statute, there will be a good deal of doubt as to the meaning of cultivation by hired servants. Therefore if proviso (*ii*) remains, this Explanation is necessary. If it is deleted, the effect will be that the position of the under-raiyats will be very very insecure. Under clause (*d*), in the proviso (*i*) (*1*) and (*i*) (*2*) we find that those under-raiyats who have got a permanent and heritable right in the land and also those under-raiyats who are in possession of their land and homestead thereon for a continuous period of 20 years, even those will be liable to be ejected under proviso (*ii*). Their position will be utterly insecure unless there is this Explanation, because under the new law all classes of people will have the right to acquire occupancy rights. These people will eject the under-raiyats who have been in possession of their lands and homesteads for a continuous period of 20 years or who have been admitted in documents by the landlords to have permanent and heritable right in their lands. These under-raiyats will be served with a notice and the lands will be made khas and let out to bargadars. This will be a very dangerous position. Therefore, unless proviso (*2*) is deleted or unless the words "or by hired servants or with the aid of partners," be expunged, the deletion of the Explanation will be disastrous. With these words, I oppose the amendment.

Babu SURENDRA NATH BISWAS: Mr. President, Sir, I rise to support this amendment. My point is that this Explanation does not give any protection to the under-raiyat. There are some clauses in this Act by which it has been provided to eject the under-raiyat

and those clauses are not affected by the Explanation. Nor does the Explanation affect the protection clauses which are provided for affording protection to the under-raiyats. The under-raiyat, who has been admitted to hold a land under a permanent and heritable right, cannot be ejected, but there are some under-raiyats, as contemplated in section 48C and 48D, who hold land under a written lease for a fixed term and are liable to be ejected after the expiry of that term. With regard to the under-raiyats of the latter description, protection has been given that they also shall not be ejected if they hold the land for 20 years and admitted by the landlord to have a permanent and heritable right. But, an under-raiyat is liable to ejectment except in these two particular cases. Now, clause 2 of the proviso gives protection to the last mentioned under-raiyat also. It provides that he will not be liable to ejectment unless the landlord wants to take khas possession of the land and satisfies the court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid of partners, that is when the landlord wants to take the land in his own khas possession then alone he can eject the under-raiyat. So much is conceded and there is no objection to that. But objection has again been raised as to his mode of enjoying the land in his khas possession. Now clause (*ii*) give his right to enjoy the land in his khas possession by cultivation by himself or by his hired servants, etc., as mentioned above; but this Explanation objects to that right of cultivating the land on barga system. I do not understand why this distinction has been made between the different modes of khas cultivation, i.e., by hired servants and on barga system. By section 2 we have accepted the formula that cultivation under the barga system does not give the cultivator the right of tenancy. I think most of the members will agree with me in holding that the system of barga arose only when the raiyat or the man who was in khas possession of the land could not cultivate the land by his own hands but needed to have it cultivated by hired labourers. That was the origin and history of the barga system. That is why this House did not acknowledge the bargadar as a tenant. Now, an objection has been raised to the raiyats cultivating the land by bargadars. There is a penalty clause, viz., 48E, which lays down that if the raiyat cultivates the land under barga system within four years of the ejectment of the under-raiyat, the latter would be entitled to get back the land. I do not understand, Sir, the reason why an invidious distinction should be made between the different classes of khas cultivation. Should I take it that there is a motive behind it: that the party who are opposing the deletion of this Explanation wants to lay down or to have provided by this Act indirectly that a bargadar has a tenancy right or is a tenant. I suspect there is such a motive behind it. That is the reason for objecting to the raiyat's cultivating the land by barga

system after ejectment of the under-raiyat. On our part, Sir, by deleting this Explanation we do not mean to lay down a proposition that a hired servant is a bargdar or that a bargadar is a hired servant. It may seem defamatory to some members of this Council if a bargadar is called a hired servant. We refrain from using such an expression. This Bill has, however, provided that although a bargadar is not a tenant, he can acquire the right of tenancy. But my reading of the law is that as soon as he becomes a tenant he ceases to be a bargadar: that is the interpretation many of the members have taken of the matter. We want to make it clear that we do not lay down the proposition that a bargadar is a hired servant. But I do not see at the same time that there can be any objection to a raiyat's cultivating the land under the barga system after ejecting the under-raiyat. It is a right which the raiyat is entitled to enjoy, and I appeal to the members of this House not to grudge to give him this right.

With these words I support the amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I oppose the amendment. I can assure my friend Babu Surendra Nath Biswas that the motive behind the opposition which is found in this quarter of the House is neither due to any heat nor to any desire on the part of any one of us to give any tenancy right to a bargadar, but because we feel that it is wrong that we should at this stage initiate any principle which might encourage the ejectment of under-raiyats. Sir, the principle behind this Explanation is that nothing should be done which should encourage the ejectment of an under-raiyat by a raiyat. My friend's arguments would have been quite valid if they were made in the year 1885 when a certain amount of status was originally proposed to be given to the under-raiyat, but I think much water has flowed down the Ganges between the years 1885 and 1928 and if my friend will kindly read the statistics of the number of under-raiyats in the Presidency of Bengal, I think, he will realise the enormous responsibility that lies on us the Legislature to which the under-raiyats too may seek for some protection. What does section 48C provide? It provides that an under-raiyat can be ejected under certain circumstances. Now, once you allow ejectment of an under-raiyat, I think the law must lay down that that ejectment must be within a very narrow compass. I do not think the law should do anything which should encourage the ejectment of an under-raiyat, because once you do encourage the ejectment of under-raiyats, almost all the under-raiyats of Bengal will be ejected in no time. This is where statistics come to be of importance. I saw the settlement report of my own district, Nadia, yesterday and I found that the number of under-raiyats is about 322,000 and if I forget not, I believe, that the district of Jessore contains about seven to nine lakhs of under-raiyats.

If these figures are correct—if there are about seven to nine lakhs of under-raiyats in Jessore and more than three lakhs in Nadia and an equal number in other districts, should we encourage the eviction of under-raiyats by the raiyats. A very salutory principle has been started, namely, that the ejection of an under-raiyat should only be possible if a raiyat requires the land for his own purpose and thereby the law lays down that in defining what for his own purpose means, it says that it is not cultivation by a bargadar. I can quite understand that a raiyat who has got his own land will utilise it for any purpose he likes. A raiyat will cultivate it by hired labour or in partnership or by bargadar even. I have no objection to that. But the question is whether you are going to do anything by which the raiyat will be able to evict the under-raiyat and thereafter turn the land to be cultivated by a bargadar. Once you are going to do that, you are going to deprive lakhs of people who are under-raiyats of their living. In view of the figures I have given, will my friend say that these men numbering about several lakhs -some of whom having occupancy rights should be ejected. I respectfully submit that there is a vast number of non-occupancy under-raiyats in Bengal. I think their number is several lakhs and they will immediately be evicted, if you once allow a raiyat to evict his under-raiyat and thereafter cultivate the land by a bargadar. I do not deny that the raiyat has a right to cultivate what he has by a bargadar but certainly I deny the right of a raiyat to evict his under-raiyat and thereafter turn him into a bargadar. That is the principle behind this Explanation, and I think the deletion of this Explanation will practically make us accept the principle that we are encouraging the eviction of an under-raiyat. I quite realise, Sir, that this Explanation may be deleted and my purpose will still be served by the main section as it has been framed. It would not be possible for a raiyat to get the land to his own possession unless he has satisfied the Court that he requires the land for his own homestead and for cultivation by himself, or by members of his family, or by hired servants, or with the aid of partners. It is open to anybody to argue that the law differentiates between cultivation by himself and members of his family or by hired servants, the law does not contemplate, so far as the language is concerned, cultivation by a bargadar. At the same time when the Explanation is there, I think, it is necessary to avoid litigation and to make people realise their own position and from that point of view, I think it will be desirable to have this Explanation though personally I do not see any harm to have this clause deleted except that it will lead to litigation.

Babu AKHIL CHANDRA DATTA: Sir, I beg to support this amendment. I think there is some confusion regarding the provision made in this section—48C—and the confusion is due partly at all

events to the bad drafting. The section provides that an under-raiyat can be ejected under four circumstances, first for default of payment of rent, about which there is no trouble: secondly, if the land is made unfit for the purpose of the tenancy about this also there is no trouble or controversy. But the trouble begins when we come to sections C and D. C says that an under-raiyat can be ejected after the expiry of a written lease and in the case of oral lease after six months' notice. Now, as has already been explained, there are two classes of under-raiyats who cannot be ejected under any circumstances whatsoever, namely, those who have been admitted in documents by the landlord to have a permanent and heritable right in the lands, and those who have occupied for 20 years with homestead on the land. This class of under-raiyats are immune from eviction. (Several voices: They are not so as the Act stands.)

4-15 p.m.

It is precisely this that I am combating. On account of bad drafting it looks like that on a superficial reading.....

Mr. PRESIDENT: Please turn towards the Chair.

Babu AKHIL CHANDRA DATTA: I was going to say that on account of bad drafting, it is possible to put a misconstruction on this section, namely, that an under-raiyat can be ejected even in these two cases, viz., where he has been admitted in a document by the landlord to have a permanent and heritable right in his land, or where he has been in possession for a continuous period of 20 years. Even in these two cases the possible misconstruction is that there can be an ejectment of an under-raiyat if the landlord can satisfy the court that he requires the land for his homestead or for cultivation by himself. That is not the proper interpretation of the section. What the section really means is that in these two cases the under-raiyat cannot be ejected under any circumstances whatsoever. If there is any doubt about that, the drafting should be improved and the position made absolutely clear. As a matter of fact we have suggested to Mr. Sachse to look into the matter, because it should be made clear that there cannot be any ejectment of under-raiyats in these two cases under any circumstances. My submission is that a very large class of under-raiyats, who have some stake and some interest in the property, are not affected at all by this Explanation. Clauses (*i*) (*1*) and (*i*) (*2*) relate only to those under-raiyats who have been in occupation for a short time. But the question which arises is whether in cases of under-raiyats other than those falling under these two classes the raiyat should be given an opportunity of regaining his land. This Explanation recognises the necessity, in some cases at least, of the raiyat being able to recover the possession of the under-raiyati land

and that for very good reason. May I ask this House if it is at all desirable that a widow, or a minor, or a man who is sent to jail, should not be allowed to cultivate his or her land through an under-raiyat or a bargadar? Let us take a case where a widow leases out her land to an under-raiyat and where her real intention is that the lease should be for a short time only, that is until she is in a position to cultivate the land by a member of her family. Let us consider the case of a tenant who for some domestic reason cannot cultivate his land himself. I am not arguing the case of a zamindar or a tenure-holder, but that of an actual, bona-fide, genuine cultivator who finds it impossible to cultivate himself for the time being. He leases out his land to an under-raiyat, the real intention of both the parties—being the lessor and the lessee—is that as soon as the crisis in the cultivator's family is tided over, the land should go back to him. May I ask what will be the position of that genuine cultivator if under this Explanation he is not given sufficient opportunity to get back his land. I say that the law recognises the necessity in some cases of the raiyat recovering his land. The whole question is what should be the extent of that protection—I have already spoken about the protection of raiyats. What should be the extent of the protection in the cases of widow cultivators, orphan cultivators and such people. So far as clause (*ii*) is concerned, the protection given is this, that if he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid of partners, he can get back his land. There is no trouble here. But the Explanation to clause (*ii*) withholds the protection if the raiyats cultivates through bargadars. The whole question is whether that protection should be extended to a case where a raiyat wants to cultivate his land through a bargadar. On this point the principle has already been accepted by this House that the bargadars are not tenants in all cases. Rightly or wrongly this principle has been accepted and all later legislation in the Bill must be consistent. When that principle has been accepted, is it not fair that a person, simply because he had let out his land for a short time, should be given a chance to get back his land when he is in a position to cultivate it? I think it is only fair that he should.

It will, of course, look somewhat cynical, but let me put the case of a widow or a minor who has let out the land to an under-raiyat and who is anxious to eject the under-raiyat because he knows that if the under-raiyat is allowed to be in possession for a continuous period of 20 years, the under-raiyat cannot be ejected. At the same time, according to the original intention of the parties, the idea was that the lease would be of a temporary character and that the land should go back to the raiyat. Now, Sir, what will be the position of such persons unless some facility is given for the ejectment of short-term under-raiyats? So, this explanation really takes away a very large

amount of the protection than is intended to be given to the raiyat, who could not cultivate the land for some time except through under-raiyats.

Now, my friend Khan Bahadur Azizul Haque has told us that much water has flown down the Ganges since 1885, and that at the present moment the number of under-raiyats is very large in the country. I admit that, but in those cases where the under-raiyats have been in possession for a considerably long time—since 1885—they are absolutely unaffected by the provisions of this section. In fact, an immense improvement has made in the position of the under-raiyats by this section 48C. In this connection if we compare the present provision in the amending Bill with the provisions in the existing Act, then and then only shall we be in a position to see to what appreciable extent an improvement has been made in the status and position of under-raiyats. We cannot shut our eyes to realities: most of the raiyats, vast majority of them, are cultivators: there is no denying this fact. And in pleading for the protection of these raiyats. I am pleading for actual tillers of the soil.

Babu JITENDRALAL BANNERJEE: Sir, in supporting this amendment may I point out in the first place that the figures quoted by Khan Bahadur Azizul Haque are far from being either cogent or impressive? My friend said that there were two lakhs of under-raiyats in the Nadia district and seven lakhs in the Jessore district, and he apprehended that as soon as this amending Bill was passed the raiyats would proceed to evict the under-raiyats. But why? Under the amending Bill, if it is passed into law, the raiyat's power of eviction is certainly going to be circumscribed. He cannot possibly oust an under-raiyat who has been in possession for 20 years: he cannot possibly oust an under-raiyat unless he requires the land for his own purposes. His powers of eviction, therefore, are going to be restricted. On the other hand, what is the present position? Under the present law, he can oust the under-raiyat at any moment he likes. And yet, in spite of these ample powers of eviction, so many under-raiyats are still in possession of their lands; Why? Simply because the economic laws have been in operation, and those economic laws will continue to be in operation afterwards. If it is to the advantage of the raiyat that the under-raiyat should be in possession of his land, as apparently it is, there is no reason why, contrary to his own advantage, simply for the barren pleasure of ousting the under-raiyat, he should proceed to do so.

Sir, I support the amendment because it is in harmony with the spirit and scheme of the amending Bill. And I should like here to enter my protest against the constant tendency on the part of Government to take away with one hand the rights which they confer with

the other. One of the principles that we have accepted is that bargadars and bhagidars are not to be treated as tenants. I say nothing as to whether this proposition is fair in the abstract or not. We have arrived at a compromise and we think that a bargadar cannot be treated as a tenant under the existing social and economic conditions of the country. Such being the case, why should Government attempt to give the bargadar a status which it is apparently not in a position to give?

Sir, another principle of the Bill is that under-raiyats should be afforded protection. Quite true; but at the same time it should be remembered that the under-raiyat's protection must not be at the expense of the raiyat. The under-raiyat has been given a certain measure of protection already: he cannot henceforth be evicted if he has been in possession of the land for 20 years or unless the raiyat wants the holding for his own purpose. That is sufficient for the present. At present the under-raiyat is absolutely without protection. But we must see that, in the excess of your generosity, you do not cut at the roots of the rights of the raiyats at the same time.

Sir, what will the deletion of the explanation mean? It will simply mean that the raiyat will now be able to evict the under-raiyat and possess the holding if he wants it for cultivation "by himself." And this expression, "cultivation by himself," ought to include cultivation by servants, hired labourers, partners, as well as bhagdars and bargadars. I do not go so far as to say that bargadars and bhagidars are no better than hired labourers: but at the same time you cannot place them on the same level with the under-raiyats. The highest position which you can possibly confer on the bargadar is that he is a partner in as much as he gets a share of the produce without contributing any share towards the capital: he is a partner in a position of some advantages. If, therefore, a raiyat can oust an under raiyat when he wants the land for cultivation by himself or partner, I do not see why he should not be able to oust the under-raiyat when he wants to cultivate the land by a bargadar or bhagidar.

4-30 p.m.

Maulvi NURUL HUQ CHAUDHURI: I ought to explain our policy in regard to the present Amendment Bill. Our policy is to give as much as possible to the actual cultivators of the soil but the policy of my friends the Swarajists is to give as little as possible to the actual cultivators of the soil. (VOICES: Question!) There should be nothing in the Amending Bill which would prevent the actual and bona fide cultivator from acquiring land He must be able to come up to the court at any time and satisfy the court that he wants land for his own cultivation. What we object to is that the land should be in the hands of persons who are not bona fide cultivators,

that is in the hands of persons who will not cultivate with plough but want to cultivate with quill pen. It is against this class of cultivators, persons who are not bona fide cultivators but who want to cultivate through the bargadars, that the Explanation is necessary. I would therefore oppose this amendment and I would suggest that the clause should be left as it is with the Explanation with a view to preventing mala fide tenants coming into cultivate with their quill pens.

Mr. PRESIDENT: The discussion on this clause is closed.

[At 4-32 p.m. the Council was adjourned and it reassembled at 4-42 p.m.]

Mr. PRESIDENT: I shall now go back to No. 831 as I proposed to do.

The following amendments were called but not moved:—

Babu AKHIL CHANDRA DATTA to move that in clause 32 in the proviso to the proposed section 48C (*d*), line 1, after the words "an under-raiyat" the following shall be inserted, namely:—

"not holding on condition of delivering a fixed quantity of the produce."

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 32, in the proviso to proposed section 48C (*d*), lines 4 and 5, for the words, letter and brackets "in clause (*c*) or clause (*d*)" the words, letter and brackets "in clause (*b*) or clause (*c*)" shall be substituted.

Babu AKHIL CHANDRA DATTA to move that in clause 32 in the proviso to the proposed section 48C (*d*), line 4, the words "clause (*c*) or" shall be omitted.

Babu SACHINDRA NARAYAN SANYAL and Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 32 in the proposed section 48C (*d*), clause (*i*) (*I*) of the proviso shall be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE to move that in clause 32, in the proviso (*i*) (*I*) to the proposed section 48C (*d*), in line 1, after the word "admitted" the words "or recognised" shall be inserted.

Babu SARAL KUMAR DUTT to move that in clause 32, in the proposed section 48C, in proviso (*i*) (*I*) to clause (*d*), for the word "document" the words "registered lease" be substituted.

Mr. BIJOY PROSAD SINGH ROY to move that in clause 32, in proviso (*i*) (*1*) in clause (*d*) of the proposed section 48C for the words "the landlord" the words "the proprietor or permanent tenure holder" shall be substituted.

Mr. PRESIDENT: Now I propose to take Nos. 839 and 840 together.

Maulvi SYED NAUSHER ALI: I beg to move that in clause 32, in proviso (*i*) (*1*), in clause (*d*), of the proposed section 48C, line 5, for the word "and" the word "or" shall be substituted.

My object is very simple and plain. What I want is that not only the raiyats having permanent *and* heritable right should be protected from eviction but under-raiyats having either permanent or heritable right should be protected. We are all interested in the improvement of agriculture in this country and I would submit to this House that if under-raiyats be ejected so very frequently and if the only protection given under this clause be that an under-raiyat will not be evictable if he has got permanent *and* heritable right that will unusually restrict the number of the under-raiyats who will be protected. I submit that this House will agree to substitute the word "or" in place of the word "and." With these words I beg to move my amendment.

The following amendment was called but not moved:—

Khan Bahadur Maulvi AZIZUL HAQUE to move that in proviso (*i*) (*1*) to the proposed section 48C (*d*), lines 5 and 6, after the word "*heritable*" the words "or occupancy" shall be inserted.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I oppose the amendment. The words in the proviso are "permanent and heritable right in his land" and the mover wants them to be changed to "permanent or heritable right in his land." An under raiyat's tenancy is heritable under section 48F. What is really admitted by the landlord is what we call in common parlance "maurashi" and that includes that right also. If the right be permanent it must be heritable also. Therefore the word "or" has no meaning and for this reason the word in the amending Bill is "and." I oppose the amendment.

The motion of Maulvi Syed Nausher Ali was then put and lost.

The following amendment was called but not moved:—

Babu JITENDRALAL BANNERJEE to move that in clause 32 proposed proviso (*i*) (*2*), section 48C (*d*), shall be omitted.

Mr. PRESIDENT: Before I take up amendment No. 842 I would go back to the second part of amendment No. 828 which was left out.

The following motion was called but not moved:—

Maulvi ASIMUDDIN AHAMAD to move that in clause 32 in the proposed section 48C (*d*)—

(*b*) for clause (*i*) (*2*) of the proviso, the following shall be substituted:—

"(*2*) been in possession of his land for a continuous period of twelve years and a homestead thereon for a continuous period of seven years whether before or after or partly before or partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928."

Maulvi SYED NAUSHER ALI: I beg to move that in clause 32 for proviso (*i*) (*2*) to clause (*d*) of the proposed section 48C the following shall be substituted, namely:—

"(2) been in possession of his land for a continuous period of twelve years whether before or after or partly before or partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon."

Now a comparison of this with the proposed clause (*2*) will show that I have changed the word twenty to twelve and that I have stated that if a tenant has either got a homestead on the land or has been in possession of the land for a continuous period of twelve years, in either of these two cases he will not be liable to ejectment. As regards the years twelve and twenty, I would submit to this House that everywhere we see the number of years to be 12. I do not know what charm the word twenty years has so far as this section is concerned. If we just refer to section 20, we will find in the definition of a settled raiyat of a village, the word "twelve" occurs there and not "twenty," and if we refer to sub-clause (*2*), section 20, there we further see that it is not necessary for a settled raiyat of the village that the raiyat should hold the same plot of land for a continuous period of twelve years. Such is the case in respect of settled raiyat. Now, Sir, I have not been able to find any reason why there should be twenty years in case of an under-raiyat in place of twelve years. In the Law of Limitation as well we see twelve years and I have not heard of twenty years anywhere. In these circumstances I submit that it would be too hard upon the raiyat to require him to be protected under provisions of the law that he should be on the land for a continuous period of twenty years and not twelve years. As regards

an under-raiyat I have further suggested that when he has a homestead on the land he should not be ejected. The reason is simple. The under-raiyat has been on the land for sometime; he has perhaps raised some structure of a permanent character on the land and he has been living there for many years with his family. Therefore it will be an act of inhumanity on the part of the raiyat to evict him with his family from that land. I therefore hope the House will not allow a raiyat to evict an under-raiyat from a land where he has got a homestead. With these remarks I beg to move this amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: I may say at once that we have every sympathy with this amendment but as I have explained previously to the House we are proceeding with a Bill which is a Bill of compromise, and therefore we must proceed on the lines of the Bill as drafted by us and oppose this amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I think the amendments Nos. 842, 843, 847 and 848 are practically the same.

Mr. PRESIDENT: What I propose to do is to take Nos. 842, 843, 845 and 846 together; then I will take up Nos. 845 (*b*) and 849 together.

The motion of Maulvi Syed Nausher Ali was then put and agreed to.

The following motions failed:—

Khan Bahadur Maulvi AZIZUL HAQUE to move that in the proviso (*i*) (*2*) to the proposed section 48C (*d*), lines 2 and 3, for the words "land and a homestead" the words "land or a homestead" shall be substituted.

Maulvi NURUL HUQ CHAUDHURI to move that in clause 32, in proviso (*i*) (*2*), lines 3 and 4, to the proposed section 48C the words "and a homestead thereon" shall be omitted.

Maulvi AZIZUR RAHMAN to move that in clause 32 in proviso (*i*) (*2*) of clause (*d*) of the proposed section 48C—

(*a*) in lines 3 and 4 the words "a homestead thereon" shall be omitted, and

(*b*) in line 6 for the word "twenty" the word "five" shall be substituted.

Kazi EMDADUL HOQUE to move that in clause 32, in proviso (*i*) (*2*) to clause (*d*) of the proposed section 48C, lines 3 and 4, the words "and a homestead thereon" be omitted.

Babu AMARENDRA NATH GHOSE and Babu MANMATHA NATH ROY to move that in clause 32 in the proposed section 48C (*d*) in proviso (*i*) (*2*) in lines 5 to 7 for the words "Continuous period of twenty years" the words "Continuous period of twelve years" shall be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE to move that in proviso (*i*) (*2*) to the propsed section 48C (*d*), line 6, for the word "twenty" the word "fifteen" shall be substituted.

5 p.m.

Mr. PRESIDENT: All amendments up to No. 849 fail. I shall now take up motion No. 850.

The following motions were called but not moved:—

Mr. W. H. NELSON to move that in clause 32 in the proposed section 48C (*d*) at the end of sub-clause (*2*) of clause (*i*) of the proviso the word "and" be inserted.

Babu AKHIL CHANDRA DATTA, Babu JOGINDRA CHANDRA CHAKRAVARTI, Rai SATYENDRA NATH ROY CHOUDHURI Bahadur and Maulvi KADER BAKSH to move that in clause, 32, clause (*ii*) of the proviso to the proposed section 48C (*d*) with the *Explanation* thereunder shall be omitted.

Srijut BIJAY KUMAR CHATTERJEE and Babu JITENDRALAL BANNERJEE to move that in clause 32 in the proposed section 48C (*d*), proviso (*ii*) shall be omitted.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 32 in the proposed section 48C (*d*), for clause (*ii*) of the proviso, the following shall be substituted, namely:—

> "(*ii*) unless the landlord has satisfied the Court that he requires the land for his homestead or for his *khas* possession."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh: I move that in clause 32, in proviso (*ii*) of clause (*d*) of the proposed section 48C, line 1, before the word "unless," the words "and in the case of under-raiyats other than those described above" shall be inserted.

In moving this amendment I only wish to clear up doubts that might arise with regard to it.

Mr. F. A. SACHSE: Government accept this amendment, Sir, subject to some drafting alterations that may be necessary.

Mr. PRESIDENT: Will you please tell me what alterations Government suggest? Will you please also hand over a copy of the amendment, as redrafted, to the Maharaja? (After a pause). Maharaja, do you accept the amended drafting?

Babu JITENDRALAL BANNERJEE: We on this side, Sir, have not been favoured with the Government amendment as now drafted.

Mr. PRESIDENT: I will just now read it out. It is proposed to replace the word "above" in the last line of the Maharaja's amendment by the words "clause (*i*) of this proviso."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I accept it, Sir.

The following amended motion was then put and agreed to:—

"That in clause 32, in proviso (*ii*) of clause (*d*) of the proposed section 48 C, line 1, before the word 'unless' the words 'in the case of under-raiyats other than those described in clause (*i*) of this proviso' shall be inserted."

The following motions were called but not moved:—

Maulvi SYED NAUSHER ALI to move that in clause 32, in proviso (*ii*) to clause (*d*) of the proposed section 48C, the words beginning with "or" after "homestead" in the fifth line up to "partners" shall be omitted.

Babu AMARENDRA NATH GHOSE and Maulvi TAMIZUDDIN KHAN to move that in clause 32, in the proposed section 48C (*d*), in proviso (*ii*), in lines 8 to 11, the words "or by hired servants or with the aid of partners" and the "Explanation" shall be omitted.

Mr. KHWAJA NAZIMUDDIN to move that in clause 32, in the proposed section 48C (*d*), from clause (*ii*) of the proviso, the following words be ommitted, namely:—

"or by hired servants or with the aid of partners."

5-15 p.m.

The motion that in clause 32, in the proposed section 48 C, the Explanation shall be omitted was put and a division asked for.

Mr. A. K. FAZL-UL HUQ: On a point of order, Sir, before you announce the result of the division. We noticed that in this voting Government Members remained neutral. I raise this point of order

to enquire whether the Government Members can do that, it being their draft Bill, submitted to the Council, without assigning any reasons.

The Hon'ble Sir PROVASH CHUNDER MITTER: The reason is that after the disposal of amendments Nos. 860-861 we thought that it would be better for us to remain neutral.

Mr. A. K. FAZL-UL HUQ: If the reason had been given in proper time, then we might have gone possibly to the other lobby. I submit that this reason should have been given before the amendment was put to a division and not after the division was over.

The Hon'ble Sir PROVASH CHUNDER MITTER: There was no opportunity earlier than this to state the reason. We decided as we thought best.

Mr. PRESIDENT: What I think proper is this: Government ought to support their own measure, unless they feel justified to accept any amendment, which, in that case, they should vote for. You are perfectly right, when you say that if Government decided to remain neutral they should have explained their attitude before the division was taken. I cannot, however, compel them to do so.

Mr. A. K. FAZL-UL HUQ: The point that was raised by the amendment was the deletion of a clause which Government have themselves enacted in the Bill. Therefore, it is a question whether a certain clause should or should not remain in the Bill. On that point, I submit, Government should not have remained neutral without assigning any reason.

The Hon'ble Sir PROVASH CHUNDER MITTER: As a matter of courtesy and not for any other reason, I can give this explanation. There is an intimate connection between the amendment which was passed inspite of our opposition and the present amendment. As that amendment has been passed, our attitude towards the original Bill changed and we remained neutral in this division. If this amendment was not passed, we would have opposed this explanation; but as the House passed amendment No. 842, we thought that it was necessary to modify our views. Ordinarily, we stick to our Bill.

Dr. BIDHAN CHANDRA ROY: Is it not a fact that in the case of amendment No. 842, Government remained neutral?

The Hon'ble Sir PROVASH CHUNDER MITTER: No, we oppose it.

Mr. PRESIDENT: An explanation has been given. Of course, it is not necessary for me to express any opinion, whether it is good, bad or indifferent.

The result of the division was as follows:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Remes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Banerjee, Mr. A. C.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Bose, Babu Bejoy Krishna.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Das Gupta, Dr. J. M.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Sarai Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Gupta, Mr. Jogesh Chandra.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Nem Chandra.
Pal Choudhuri, Mr. Ranjit.
Paikat, Mr. Prosanna Deb.
Ray, Babu Nagendra Narayan.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Roy, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Ray, Mr. Bijay Prasad Singh.
Roy, Mr. D. N.
Ray, Mr. Kiran Sankar.
Ray Chaudhuri, Rai Bahadur Satyendra Nath.
Sanyal, Babu Sachindra Narayan.
Sarbadhikari, Dr. Sir Deva Prasad.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Abbott, Mr. E. G.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dowding, Mr. T. W.
Eddis, Mr. A. McD.
Fyfe, Mr. J. H.
Gordon, Mr. A. D.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Luke, Mr. N. R.
Martin, Mr. O. S.
McCluskie, Mr. S. T.
Miller, Mr. C. C.
Mukerji, Mr. S. C.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Sarker, Rai Sahib Rebati Mohan.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 51 and the Noes 34, the following motion was carried:—

"That in clause 32 in the proposed section 48C, the 'Explanation,' shall be omitted."

The following amendments failed:—

Babu JITENDRALAL BANNERJEE to move that in clause 32, in the "Explanation" to proposed section 48C, line 4, for the words "does not include," the words "will include and mean" shall be substituted.

Babu JITENDRALAL BANNERJEE to move that in clause 32, in the "Explanation" to proposed section 48C, line 4, the word "not" shall be omitted.

Mr. BIJOY PRASAD SINGH ROY to move that the "Explanation" to section 48C shall be inserted after section 48E with the omission of the words "and in section 48E."

The following amendment was called but not moved:—

Babu JATINDRA NATH CHAKRABURTTY to move that in clause 32, in the proposed section 48C, after clause (*d*), for the existing proviso, the following be substituted:—

"Provided that an under-raiyat shall not be liable to ejectment, if the under-raiyat has—

(1) been admitted in a document by the landlord to have a permanent and heritable right in his land, or

(2) been in possession of his land and a homestead thereon, for a continuous period of 20 years, whether before or after or partly before or partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, provided also that an under-raiyat shall not be ejected on the ground specified in clause (*c*) or (*d*).

(*ii*) Unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by the members of his family or by hired servants or with the aid of partners."

Khan Bahadur Maulvi AZIZUL HAQUE: I move that in clause 32, after the proposed section 48D (*1*), the following proviso shall be added, namely:—

"Provided no such suit shall lie within nine years after settlement with the under-raiyat."

Sir, the House will see that under section 48D (*1*) "the landlord of an under-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent of the under-raiyat, and to eject the under-raiyat if he refuses to pay the rent determined by the court."

I want to add a proviso to the above to the effect that no such suit shall lie within nine years after settlement with the under-raiyat. The reason is this: that the under-raiyat is settled at a certain particular time and after that a certain period should be fixed within which the rent of the under-raiyat should not be enhanced. On this simple ground and no other, I move this amendment.

Rai MAHENDRA NATH GUPTA Bahadur: I had thought that the mover would have been well advised not to move this amendment which introduces a term of years in connection with the under-raiyat. We have in another place deleted altogether section 85; and the whole plan of our Bill is not to mention any term of years with reference to under-raiyats, whether in the manner proposed in this amendment or in any other way. We, therefore, oppose this amendment.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and lost.

Maulvi NURUL HUQ CHAUDHURI: I move that in clause 32, in the proposed section 48D (2), in line 4, for the word "one-third" the word "one-fourth" shall be substituted.

The question raised in my amendment is that in case the under-raiyat will have to pay rent in money and not in kind, what should be the rate of rent. According to the provisions in the Bill, the rate of rent cannot in the case of a money-rent exceed one-third of the value of the average estimated produce of the land and in the case of a produce-rent, one-half of such produce. I have proposed that in place of one-third, one-fourth should be substituted, because in my view we ought to leave something to the under-raiyats which will compensate them for the labour they have employed, and for the capital they have sunk into the land. Under the present Act, the limit of rent payable by the under-raiyat is 50 per cent. above the rent payable by the raiyat himself. To make it at once one-third of the total gross produce of the land would be a very great departure. I therefore propose that in the case of the rent payable in money, the amount should be one-fourth of the gross produce, while I propose to leave the rent payable in kind to one-half of such produce as proposed in the Bill.

Rai MAHENDRA NATH GUPTA Bahadur: I should like to explain how this one-third has been worked out. It has been said already by the mover that it is fair that the under-raiyat's rent should ordinarily be 50 per cent. over the raiyat's rent. It is generally accepted that one-fifth of the gross produce is a fair rent for the raiyat; adding 50 per cent. on to it, it gives about one-third and that is how it has been

worked out. It is considered to be fair and is the maximum which the under-raiyat may be required to pay at any time. That is the reason why one-third has been put in this Bill, and that is the maximum. Therefore I oppose this amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order, Sir. I think amendment Nos. 874 and 875 should be taken into consideration along with No. 870: one refers to money-rent and the other to produce-rent.

Mr. PRESIDENT: I accept your suggestion.

Maulvi SYED NAUSHER ALI: I beg to move that in clause 32, in the proposed section 48D (2), last line, for the words "one-half," the words "one-third" shall be substituted.

It is stated that when the rent is payable in money, it should not exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit, but where it is produce-rent, it should be one-half. I for one have not been able to understand this distinction. If it is rent, whether it is payable in kind or in money, that makes no difference whatsoever. If in one case it is one-third, I do not know why in the other it should be one-half. It may be urged that bargadars in this country generally give one-half. I may point out to the House in this connection that there have been disputes in some parts of Bengal with regard to the share of produce payable to the landlords by bargadars, and vast tracts of land are now lying fallow for years, and I hope Mr. Sachse will bear me out when I make this statement. I understand he had been to those areas and there had been an attempt by the executive officers to settle the disputes but to no avail. That being so, the bargadars have found it difficult to cultivate lands on half produce, and in fact I have read articles in papers and I am myself convinced that so far as some parts of Jessore are concerned, the bargadars cannot pay half the produce without suffering a loss.

5-30 p.m.

If I am permitted to tell this House, I may submit that even executive officers tried to induce landlords on a consideration of all the circumstances that they should take less than half, i.e., what they now take from bargadars. Now, Sir, if these are the facts, I do not see why there should be any distinction between tenants paying money-rents and those paying produce-rents. There is one more fact to which I wish to draw the attention of the House, especially of the Government members. I would ask them to look to the expenditure they have got to incur on their model farms and the produce that these model farms have been yielding. If they be pleased to compare the present

difficulties of cultivators and the cost that they have to incur in cultivating their lands, I think the whole House will agree with me in holding that it will be unjust to fix the maximum at one-half and not at one-third. With these observations, I commend my amendment to the consideration of the House.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I am afraid that I have not been able to see the point of view or rather the principle of estimating the maximum so far as section 48D is concerned. This section provides that rate of rent or the enhanced rate of rent shall not exceed one-third in the case of money-rent and one-half in the case of produce-rent. I do not agree with my friend, Maulvi Syed Nausher Ali that there is no difference between a raiyat on fixed money-rent and one on produce-rent, because once a man is on produce-rent basis, the landlord takes the risk of bad years. The landlord does not get in lean years exactly the same amount as he gets in fat years, although the percentage is the same. It is not so in the case of money-rent, as there is no differentiation, as the rent is fixed. Now, what I object to is that this percentage is fixed at one-third in the case of money-rent. This is a new departure, a departure which I do not know if the Bengal Government is going to make after any deliberation in the matter. As we read the history of this legislation, we find that from the year 1773 down to 1885 the maximum was all along proposed to be 25 per cent. In all temporarily settled estates I believe it is one-sixth the gross produce which is taken as the basis. This question was discussed in the year 1885, and at that time Government accepted the principle that enhancements should in no case be more than 25 per cent. Of course, that was with reference to raiyati lands. In 1885, the Government of India definitely laid down that the enhancement of rent shall not be more than double the previous rent or more than one-fourth the average annual value of the gross produce. That is the principle which has prevailed from the Muhammadan times down to the time when the present law was undertaken. So far as produce-rent is concerned, on the same principle, I think it should be one-third instead of one-half.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I beg to oppose both the amendments. I may say at once without making a long speech that we on this side of the House have given the matter our best consideration and we find that the proportion both in regard to produce-rent as well as money-rent is the fairest proportion and should be accepted.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I have already said that the proportion is one-third for cash-rent. As regards pro-

duce-rent, it is admitted by the mover that, at any rate in some parts, the rate is one-half, though he says it is high. But it has been put down as the maximum. It is well known that usually the rate is one-half and it is called adhi and so forth. It may be considered high but one-half has been put down as the maximum.

Regarding the point raised by Khan Bahadur Maulvi Azizul Haque, viz., that in 1885 a different proportion was proposed, I submit that he is certainly wrong, because the proposal then also was that in the case of under-raiyats, the proportion should be "one-third, viz., one-fifth plus one-half of one-fifth."

With these words, I oppose these amendments.

Mr. SARAT C. BASU: Sir, may I rise on a point of order? I fail to understand how this amendment could be put in when the whole matter is left to the discretion of the court. It is left to the discretion of the court, and at the same time this discretion is sought to be muzzled and limited to half.

Mr. PRESIDENT: I quite understand what you say, but I very much doubt if the mover of the amendment would agree with you Any way, he is in order.

The motion of Maulvi Nurul Huq Chaudhuri was then put and lost.

The motion of Maulvi Syed Naushei Ali was then put and lost.

The following motions were called but not moved:—

Maulvi KADER BAKSH to move that in clause 32, in the proposed section 48D (2), line 6, for the words "for the decennial period," the words "for a period of five years or any other shorter period as may appear just and proper" shall be substituted.

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 32, in the proposed section 48D (2), line 6, for the words "for the decennial period," the words "for a period of five years" shall be substituted.

Babu ROMES CHANDRA BACCHI to move that in clause 32, in the proposed section 48D (3), lines 3 to 6, for the words "he shall be entitled to remain in occupation of his holding at that rent for a term of fifteen years from the date of the agreement," the words "his rent shall not be enhanced for a term of fifteen years from the date of the agreement" shall be substituted.

Babu BEJOY KRISHNA BOSE to move that in clause 32, in the proposed section 48D (*3*), for the words beginning with "he shall be entitled to remain in occupation of his holding at that rent," the words "his rent shall not be increased" be substituted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, to move that in clause 32, in the proposed section 48D (*3*), lines 4 and 5, for the words "be entitled to remain in occupation of his holding at that rent for a term of fifteen years," the words "not be ejected and the rent so enhanced will remain in force for a period of twelve years" shall be substituted.

Babu AKHIL CHANDRA DATTA Maulvi KADER BAKSH, Babu JOGINDRA CHANDRA CHAKRAVARTI and Maulvi KASIRUDDIN AHAMAD to move that in clause 32 the proposed new section 48E shall be omitted.

Babu NAGENDRA NARAYAN RAY to move that in clause 32, in the proposed section 48E, line 1, for the word "raiyat," the words "landlord of an under-raiyat" shall be substituted.

Mr. BIJOY PRASAD SINGH ROY: I beg to move that in clause 32, in the proposed section 48E, line 8, for the words "four years," the words "one year" shall be substituted.

Sir, I think that the period of four years is rather too long. For instance, if a raiyat wants to get khas possession from an under-raiyat on the ground of cultivation by members of his family, it is unlikely that the condition of his family might undergo a change in the course of four years and it may not be possible for him to continue the cultivation by the members of his family. So, it is only fair that the time of re-entry should be limited to one year. It may be remembered that in the corresponding section in the Calcutta Rent Act, it was only six months, whereas it has been sought to be made four years in the case of the raiyat. I think it is very unjust and I therefore move the amendment.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I beg to oppose this amendment. It is not, I think, too much to expect that the landlord would keep to his promise for khas cultivation for four years. The amendment, if carried, would mean that he would be permitted to break it even after one year! I think, Sir, no further words are necessary and I oppose the amendment.

The motion of Mr. Bijoy Prasad Singh Roy was then put and lost.

The following motions were called but not moved:—

Babu NAGENDRA NARAYAN RAY to move that in clause 32, in the proposed section 48E, line 9, for the word "sublets," the words "uses in a manner different from those mentioned in section 48C (*d*) (*ii*)" shall be substituted.

Maulvi SYED NAUSHER ALI to move that in clause 32, in the proposed section 48E, line 11, for the word "may," the word "shall" be substituted.

Babu JITENDRALAL BANNERJEE: Sir, I should like to move only the first part of the amendment.

Mr. PRESIDENT: Very well.

Babu JITENDRALAL BANNERJEE: I beg to move that in clause 32, in proposed section 48E, line 11, the word "summary" shall be omitted.

My reason is simply this. We have already given the under-raiyat such rights as he had never dreamt of possessing before. We have just now provided that he shall not be evicted if he is in continuous possession for twelve years. We have also provided that he shall not be evicted even if he put up on his holding a ramshackle cottage, surreptitiously, without the least knowledge of the landlord. I only pray that this House will leave some right at least to the raiyat. As the Bill stands, the provision is that if, within four years of ejectment, the landlord again sublets the holding or any portion thereof and the under-raiyat seeks the protection of the court with a view to re-possession, the court may order such resumption after holding a summary enquiry. My proposition is, why should there be a summary enquiry? Why not make the enquiry a regular and formal business as in a suit?

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, in order to show that it is not the privilege of official members only to be neutral, I beg to say that I would be neutral in this matter.

Mr. F. A. SACHSE: Sir, I do not think that cases will very often arise when an under-raiyat can afford to go to court and claim to be put in possession of his land again on account of the fact that his landlord, having taken the land for his own cultivation, has failed to do so. If the court receives an application to that effect, what can it do but hold a summary enquiry? We cannot possibly expect the court to make an elaborate inquiry about such a matter. If there is an inquiry at all, it must be a summary one.

Maulvi SYED NAUSHER ALI: Sir, I beg to oppose this amendment on the simple ground that we do not want litigation to multiply. The protection itself is an illusary one. We all know the position of under-raiyats in this country. This summary inquiry will dispose of the cases as quickly as possible, and there will not be prolonged litigation bringing ruin on the under-raiyats as well as on the raiyats. I submit, that if this amendment is carried, only the lawyers will be benefited and none else. I, therefore, oppose this amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I support this motion of Mr. Jitendralal Bannerjee on the simple ground that if there is to be a summary inquiry by a court, so far as I know the procedure laid down for such inquiries, it is left to the discretion of the court to decide what evidence it will take. (A VOICE: It will still be a summary inquiry.) To say that it will be a summary inquiry without specifying what that means would make the law inexplicable. I therefore, support this amendment.

Babu AKHIL CHANDRA DATTA: Sir, I want to add another ground in support of this motion. This provision about summary inquiry is the sequel to the ejectment suit contemplated by clause (*ii*). If the ejectment takes place, the inquiry is not to be a summary but a regular one. The court has got to be satisfied that the landlord requires the land for his homestead or for cultivation. The evidence on both sides will have to be gone into. That constitutes a regular inquiry. By this section the regular inquiry is sought to be substituted by summary inquiry. That is why I support this amendment.

Mr. SARAT C. BASU: Mr. President, Sir, this question as to whether the inquiry should be a summary one or not depends upon whether the final order is passed upon the matter in decree or not, that is to say whether the final order will be appealable or not. If the final order be appealable, and therefore subject to revision by the appellate court, part of the proceedings at least cannot be summary. If the whole of the proceedings be summary, it is non-appealable; but if the decree is appealable, then scope should be left to the appellate court to determine whether the result of the inquiry has been correct or not. My objection is that you cannot have the proceedings partly ordinary and partly summary. In other words, if the appellate court has got a jurisdiction over the whole matter, it cannot but look into the whole thing. So that if final order is passed on a matter, a portion cannot be summary. Further, it is very difficult to enunciate what a summary inquiry is and what is not. We know that there are summary proceedings. Rules have been laid down regarding such proceedings and there are also definite rulings on the subject. Simply saying that there should be summary inquiry does not convey any

meaning. We know that one judicial officer will make a summary inquiry in one way, and another officer in another way: So, I think the amendment is a very proper one. Let there be an inquiry and let it depend on the discretion of the court as to what form it should take. The form of the inquiry should depend upon the circumstances of each case. Therefore, Sir, I object to the word "summary," and I propose that the amendment be passed.

The motion that in clause 32, in proposed section 48E, line 11, the word "summary" shall be omitted was then put and agreed to.

The following amendments were called but not moved:—

Maulvi SYED NAUSHER ALI to move that in clause 32, in the proposed section 48E, lines 13 to 15, the following words shall be omitted, namely:—

"or for cultivation by himself or by hired servants or by members of his family or with the aid of partners."

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 32, in the proposed section 48E, lines 13 to 15, for the words "cultivation by himself or by hired servants or by members of his family or with the aid of partners," the words "khas possession" shall be substituted.

Maulvi TAMIZUDDIN KHAN to move that in clause 32, in the proposed section 48E, the words "or by hired servants" and the words "or with the aid of partners" shall be omitted.

Mr. PRESIDENT: Mr. Bannerjee, will you please move the second part of your amendment No. 887?

Babu JITENDRALAL BANNERJEE: I do not move it.

The following motion was not moved:—

"That in the last three lines, in clause 32, in proposed section 48E, the words 'on such terms, if any, with respect to compensation to the person injured as to the Court may seem just' shall be omitted."

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 891, 892, 893, 894 and 895.

The following motions were called but not moved:—

Babu AKHIL CHANDRA DATTA to move that in clause 32, in the proposed section 48F, lines 1 to 3, the words "shall descend in the same manner as other immovable property, but" shall be omitted.

Kazi EMDADUL HOQUE to move that in clause 32, in the proposed section 48F, last 3 lines, for the words "but shall not be transferable except with the consent of the landlord," the words "and shall be transferable in the same manner as an occupancy raiyat" be substituted.

Babu JITENDRALAL BANNERJEE: Sir, I beg to move that in clause 32, in the proposed section 48F, lines 3 and 4, the words "except with the consent of the landlord" shall be omitted.

My first reason is this. It is not a clear and consistent principle that we are following. You have already given some protection to the under-raiyat; but certainly it is nobody's contention that the under-raiyat should be placed on the same position as the occupancy raiyat. Protection to the under-raiyat we can understand; but lumping up the interests of the under-raiyat and the occupancy raiyat we cannot, because there seems to be no principle behind it. There is another reason also. If you keep the expression "except with the consent of the landlord," what will be the effect? The position of the occupancy raiyat is an awkward and anomalous one at present. At present, the occupancy raiyat can transfer his holding only with the consent of the landlord. We know what that means: we know that it means much litigation; and we know that it means uncertainty and obscurity as regards the position of both transferer and transferee. And I submit that this unsatisfactory state of affairs should not be perpetuated in the case of the under-raiyat, in the mistaken idea of conferring a privilege upon him. We have already raised the status of the under-raiyat to a certain extent; let us be satisfied with that. Let us not make the holdings of under-raiyats transferable even with the consent of the landlord. If you could have made their holdings absolutely transferable, well and good: but since you cannot do so, do not introduce the nebulous element of custom here again.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I support this amendment of Mr. Bannerjee. The object of the amendment is very clear. It seeks to make the holding of an under-raiyat not transferable. If, however, it is laid down, as is proposed in the Bill, that the holding of an under-raiyat shall not be transferable except with the consent of the landlord, it will practically be extending the present law with regard to the transferability of occupancy raiyati

holdings to under-raiyats. We must not forget that in the chain of rent-payers and rent-receivers there is a long series of persons. And therefore, Sir, it will be extremely unwise to extend this right of transferability to anybody below the position of an occupancy raiyat.

On that ground, Sir, I support the motion of Mr. Bannerjee.

The following motions were called but not moved:—

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 32, in the proposed section 48F—

(*i*) in line 4, for the words "except with," the word "without" shall be substituted, and

(*ii*) in line 5, after the word "landlord," the words "except in the case of under-raiyats who have a right of occupancy in their lands" shall be added.

Mr. E. T. McCLUSKIE to move that in clause 32, in the proposed section 48F, last line, for the word "the," the word "his" shall be substituted.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I oppose the amendment which proposes to make the under-raiyat's holding absolutely non-transferable. Section 48F reads thus: "that it is not transferable except with the consent of the landlord." Sir, why should not the under-raiyat be able to transfer his holding if his landlord consents? The under-raiyat may have paid a salami at the time of settlement and we must remember that transfer includes sub-letting as well. On general principle the under-raiyat should have some credit on his land—in time of distress for instance—and when the transfer is made subject to the landlord's consent, the necessary safeguard is provided. I therefore oppose the amendment which has been moved by Babu Jitendralal Bannerjee. I understand the other amendments have not been moved.

Maulvi TAMIZUDDIN KHAN: Sir, I oppose the amendment. I am surprised that an amendment like this should have come from a lover of freedom like Babu Jitendralal Bannerjee. These are days of freedom, and I do not see why we should try to curtail the rights of under-raiyats in this way. If the holding of an under-raiyat is sold, it is the landlord who is affected. So, if the landlord consents to the transfer, what business have we in this House to curtail the right of the under-raiyat to transfer his holding with the consent of the landlord, by passing an amendment like this. Babu Jogindra Chandra Chakravarti has said that if this principle is accepted, the law will be

restored to what it is at present. He is wrong when he says that. If the amendment is accepted the under-raiyat's holding will not be transferable under any circumstances. He will be quite helpless: he will be liable to be ejected at any time he seeks to transfer his holding. If the landlord gives his consent to the transfer, I do not see any reason why the under-raiyat should not be allowed to sell his holding.

The motion was then put and a division taken with the following result:—

AYES.

Bagchi, Babu Romes Chandra.
Banerjee, Babu Premotha Nath.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Gunguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjee, Srijut Tarakanath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Khan Bahadur Maulvi Nafizar Rahman.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Huq, Khan Bahadur Maulvi Shramul.
Huq, Mr. A. K. Fazl-ul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prosanna Deb.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Reid, Mr. R. N.
Ray, Mr. Bijay Prasad Singh.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarbadhikari, Dr. Sir Deva Prasad.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Khan Sahib Abdus.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.

The Ayes being 32 and the Noes 52, the motion was lost.

6 p.m.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 896 and 897.

Mr. A. K. FAZL-UL HUQ: May I rise on a point of order, Sir? Will not the second part of amendment No. 894 be put?

Mr. PRESIDENT: That amendment has not been moved.

The following amendment was called but not moved:—

Babu JITENDRALAL BANNERJEE to move that in clause 32, proposed section 48G, shall be omitted.

Mr. A. K. FAZL-UL HUQ: I move that in clause 32, for the proposed section 48G, the following be substituted—

"48G. Every under-raiyat shall acquire a right of occupancy in his holding in the same manner and to the same extent as a raiyat in accordance with the provisions of sections 19 and 20."

My object in moving this amendment is to have the position of the under-raiyats made clear with regard to occupancy rights. At the present moment an under-raiyat can have rights of occupancy provided he proves that he has acquired that right by custom. It is well known that it is very difficult to establish a custom in a court of law and under ordinary circumstances nothing is more unusual than to come across an under-raiyat with occupancy rights. The amendment I propose makes the point clear so far as the process of the acquisition of these rights is concerned. I therefore beg to submit this proposal before the House and move by amendment formally.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I am sorry I cannot support this motion which has been moved by Mr. Fazl-ul Huq, and for this principal reason. It seems that the whole scheme of this amending Bill is to enlarge the rights of under-raiyats to a very large extent but the Bill has not gone so far as to lay down that an under-raiyat should have occupancy rights in the same way as other raiyats. This is opposed to the scheme underlying this Bill and if we look at the consequences which are likely to follow if we accept the general principle that an under-raiyat shall acquire occupancy rights in the same way as an ordinary raiyat, I am afraid the consequences may, in some cases, be disastrous to the position of raiyats. As I said before, Sir, under-raiyats may be of various degrees, and there is no bar in law as to how many degrees a man may go down to

acquire the rights of an under-raiyat; it will be impossible to lay down and fix precisely where we should stop and the stage beyond which we should not go. Then these anomalies are sure to rise. Then, Sir, in this Bill very large rights are going to be given to the raiyats, the right to transfer their holdings and some other rights, but if an under-raiyat acquires the same status as occupancy-raiyats and in the same way as in sections 19 and 20 of the Act, then it will logically follow that they will have to be given other rights also which will surely make the present law very complex. I submit, therefore, this is a motion which should not be accepted and I oppose it.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I wish I could accept this amendment of Mr. Fazl-ul Huq. It would have given me real pleasure if there was any way by which we could give the under-raiyats the rights which he proposes to give them, but I think this will be going too far. I do not think it will be in the interests of the under-raiyats themselves if they are given exactly the same rights as the ordinary raiyats have at present, because in that case most of the future raiyats will not sub-let their lands to under-raiyats but will cultivate them by the method of barga. A proposal very similar to this was also made before Sir John Kerr's Committee; it was considered, but it had to be dropped, because at a subsequent stage the committee thought that it was going too far. We must go very cautiously in a case like this. At the time of enacting the existing Tenancy Act in 1885 this question arose, but the Committee did not incorporate this provision in the Act. At the present moment we have gone further and certainly have given some tangible rights to the under-raiyats. We too have to proceed cautiously and I may say, Sir, that we cannot go any further.

Babu JITENDRALAL BANNERJEE: Sir, the opposition offered by Khan Bahadur Mumin has been so tepid and half-hearted that it left me gasping. The effect of Mr. Fazl-ul Huq's amendment will be that an under-raiyat who has been holding land for twelve years will forthwith be converted into an occupancy-raiyat, which again will mean that the occupancy-raiyat, will lose whatever right, property or special interest he may have acquired in the holding by the investment of his hard-earned money. I cannot conceive of a more barefaced measure of spoliation and expropriation. And I ask, is the House going to tolerate such a measure of wholesale spoliation and of gross and absolute injustice so far as the occupancy-raiyat is concerned? Sir, I cannot understand what the Government Member meant by coquetting with a proposal like this.

The motion of Mr. A. K. Fazl-ul Huq was then put and lost.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 32, in the proposed section 48G (*i*), line 4, after the word "custom," the words "or otherwise" shall be inserted.

The section reads: "Every under-raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, had by custom a right of occupancy in that land, shall have a right of occupancy in that land." I do not think that it is only by custom that an ordinary raiyat can have occupancy rights and therefore I have provided that he may have occupancy rights otherwise than by custom also.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I formally oppose the amendment, Sir. I would ask the mover what he wants to include in the word "otherwise," because the only way by which an under-raiyat can acquire a right of occupancy both under the present Act and under the amending Bill is by custom. The question of "otherwise" does not arise, Sir.

Khan Bahadur Maulvi AZIZUL HAQUE: Why not by document?

Khan Bahadur MUHAMMAD ABDUL MUMIN: That cannot be.

6-15 p.m.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Nawsher.
Atiqullah, Mr. Syed Md
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Sarker, Rai Sahib Nobati Moham.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Promotha Nath.
Banerjee, Babu Jitendralal.
Basu, Babu Basi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Nafizar Rahman.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.

Ghosh Abdulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijay Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 16 and the Noes 61, the following motion was lost:—

"That in clause 32, in the proposed section 48G (*1*), line 4, after the word 'custom' the words 'or otherwise' shall be inserted."

The following amendment was called but not moved:—

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 32, in the proposed section 48G (2) (*i*), lines 2 and 3, the words, letters and figures "26A to 26J" shall be omitted.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 900 to 906.

Maulvi SYED NAUSHER ALI: I beg to move that in clause 32, sub-section (*3*) of the proposed section 48G shall be omitted.

My object in moving this amendment is simply this. Under-raiyats will acquire occupancy rights, but they will not be protected and their interests will not be considered as protected interests. The net result of this will be that they will be given a certain right, but they will not get the benefit that generally arises out of that right. This is an inconsistency and anomaly. I would only like to say that if you want to give under-raiyats occupancy rights, as they will have under the proposed law and as they used to have previously under custom, it is only fair that they should be protected from ejectment.

Mr. A. K. FAZL-UL HUQ: I beg to move that in clause 32, in the proposed section 48G (*3*), line 2, the word "not" be omitted.

Sir, the object of my amendment is to make it clear that the interest of the under-raiyat should be a protected interest. I only

hope that this amendment of mine will not receive the spirited protest of my friend, Babu Jitendralal Bannerjee, who is of opinion that we have been conferring mountain load of benefits on the under-raiyats (Laughter). My amendment, if carried, will give some protection to the under-raiyat. If, as a balance, we have to take away certain other rights from the under-raiyats, still I would raise this question of the benefit of the under-raiyats. It seems to me that you are taking away with one hand what you are giving with the other if you do not protect the under-raiyat's interest. What is the principle underlying the privilege that is conferred on raiyats to make their holding a protected interest under the Act? It may be that for various reasons the superior interest is sold away and for no fault of his, unless the raiyat's interest is declared to be a protected interest, he will find himself in a position of great difficulty and liable to be turned out simply because he has not colluded with his own landlord. I want to have this privilege extended to the under-raiyats. I do not think that the proposal is at all extravagant, and I do submit that the position of the under-raiyats ought to be considered in connection with the series of tenancies on which we confer various benefits by this amending legislation of our.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I regret I have to oppose these amendments. The reason why the under-raiyat's occupancy right has not been made a protected interest under section 160 (*d*) is that if we make it a protected interest the security of the superior landlord's rent will be jeopardised. For instance, if the raiyat wants in any way to injure the interest of the superior landlord or if there in a collusion between him and the under-raiyat, he can very well sub-let the land to an under-raiyat, take a salami from him and then leave the land or not pay the rent to the landlord. Now, what is the result? The result will be that the zamindar will sue and sell off the holding and then he will find that there is an under-raiyat whose interest is protected under section 160 (*d*). So there is no remedy for him. For this reason, the Bill does not propose to give protection to the under-raiyat against the landlord, although it is proposed to give him protection against all the world.

The following amendments were then put and lost:—

"That in clause 32, sub-section (*3*) of the proposed section 48G shall be omitted."

"That in clause 32, in the proposed section 48G (*3*), line 2, the word 'not' be omitted."

Mr. W. H. NELSON: I move that in clause 32, in the proposed section 48G (*4*), lines 1 and 2, for the figures and letters "48C, 48D and 48E," the figures and letters "48A to 48E" shall be substituted.

Sir, the object of the amendment is to remove a contradiction which appears in the section. Under clause (*2*) of section 48G, the rights and liabilities of an under-raiyat with a right of occupancy are governed by Chapter V. Under sub-clause (*4*), as it stands in the Bill, the provisions of sections 48A and 48B would apply. The intention is that they should be governed by Chapter V. Therefore, we exclude 48A and 48B, adding them to the Exceptions named in clause (*4*).

The motion was then put and agreed to.

Babu AKHIL CHANDRA DATTA: I beg to move that in clause 32, after proposed section 48G (*4*), the following shall be added, namely:—

"(*5*) Notwithstanding anything in sub-section (*5*) of section 103B, no entry in a record-of-rights finally published shall raise a presumption of correctness as to the customary occupancy right of an under-raiyat."

I do not want to make any speech. My reason for moving this amendment is simply this. For some time past there has been a practice in some districts for the settlement officers to make an entry in regard to all under-raiyats that by custom they are occupancy-raiyats. That is an entry which we all know is not warranted by the actual state of things in the country. (A VOICE: Question.) Shall I tell my friend Mr. Azizul Haque—(A VOICE: He is not a Mr. but a Khan Bahadur)—well, I choose to call him Mr. shall I tell him this that he has no reason to question the honesty of numerous people who from their own experience tell us that that has been done by the settlement officers in many cases and the entries are not correct. I do not question the statement of my friend, Mr. Azizul Haque, because it may so happen that so far as his experience goes the entries may be correct or they may not be correct.

6-30 p.m.

But I shall frankly state that I have no experience of mine in this matter: but I have been told by most respectable and well informed people that this has been the state of things in many districts. If that is so, it is only proper that a safeguard should be provided clearly in the Act that there should not be this presumption which would otherwise be from the entry in the record-of-rights under section 103 (*5*).

Babu ROMES CHANDRA BACCHI: I formally support the motion. I do not move No. 910 which stands against my name.

The following motion was therefore not moved:—

Babu ROMES CHANDRA BAGCHI to move that in clause 32, in the proposed section 48 (*g*), the following shall be added, namely:—

"(*5*) Notwithstanding anything in section 103 (*b*) sub-section (*5*), no entry in a record-of-rights finally published shall raise a presumption of correctness as to the existence or otherwise of a customary right of occupancy of an under-raiyat."

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I am surprised that a lawyer of Akhil Babu's experience and reputation should have moved this amendment. I would not have been at all surprised if Rai Harendranath Chaudhuri, who is not present here to-day, had moved it. The House will remember that the other day he launched a violent attack against the Settlement Officer of Jessore. . . . . .

Mr. PRESIDENT: Khan Bahadur, it is better that you do not say anything about Rai Harendranath Chaudhuri behind his back.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Very well, Sir, I will say that the other day one member of this House launched a violent attack against the Settlement Officer of Jessore for what he characterised his exploitation of the illustration to section 183 in recording the under-raiyats of Jessore as having rights of occupancy by custom. Knowing who it was, I can certainly understand his ire, but I do not appreciate his judgment. I crave your indulgence, Sir, to submit for the judgment of this House the reasons why the Settlement Officer of Jessore regarded the under-raiyats there—at any rate a very large number of them—as under-raiyats who have acquired occupancy rights. In this connection, I ask your permission, Sir, to read from a letter which the Settlement Officer of Jessore wrote to the Director of Land Records.....

Dr. BIDHAN CHANDRA ROY: May I rise on a point of order? Does the amendment before the House refer to what the Settlement Officer has written?

Mr. PRESIDENT: The Khan Bahadur can certainly read from it matters which are relevant.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, this letter refers to under-raiyats who have acquired occupancy rights and also to anything which is entered in the record-of-rights—and that is

what Babu Akhil Chandra Datta wants to impeach. Therefore, I am perfectly relevant in discussing the entries in a particular record-of-rights which the other record-of-rights probably followed.

Mr. PRESIDENT: I would much appreciate it if instead of reading the whole letter you could summarise and give us matters which are relevant to the question before the House.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Very well, Sir, I shall only give the reasons which actuated the Settlement Officer and his colleagues to record under-raiyats as occupancy-raiyats.

Dr. BIDHAN CHANDRA ROY: May I know whether Mr. Mumin thinks that the proposition of the Settlement Officer of Jessore can apply to the whole of Bengal?

Khan Bahadur MUHAMMAD ABDUL MUMIN: Very nearly, because the reasons why under-raiyats, under certain conditions, are recorded as having occupancy rights are the same throughout the province.

The grounds on which the Settlement Officer of Jessore held this view are—

"(1) Raiyati holdings and lands are freely sublet from time immemorial long before the tenancy enactment, without any restrictions or objections from any side;

(2) even superior landlords recognise right of sub-lease and make stipulations about it in their pattas and kabuliyats;

(3) under-raiyati tenancies are nearly always created by registered leases in which they are very often mentioned as kaemi mokarari and never for a limited period;

(4) under-raiyats freely build houses, dig tanks and plant garden and cut trees on their holding without express consent of the superior raiyat;

(5) these tenancies are not only heritable and held from generation to generation but often transferred by sale and gifts, and such transfers are more often than not recognised by the superior raiyat and his successor in interest on receipt of a small salami or nazar;

(6) although the number of raiyats is so large in this district, cases of ejectment have up till now been extremely rare, not even one in a thousand;

(7) ordinary people do not distinguish between a raiyat and an under-raiyat and consider the rights and status of both as similar. So far as this district is concerned, an under-raiyat is a creation of the Bengal Tenancy Act and is understood only by the lawyers. In fact the word "korfa" is not locally understood at all;

(8) in case of arrears of rents, the under-raiyat is never sued for ejectment but his holding is put up to sale just as in the case of an ordinary raiyat."

I submit before the House whether these are not very good reasons for holding that the under-raiyats who hold under these conditions have not already acquired occupancy rights by custom. If this is not custom, may I ask what is and what will constitute it? Everybody who understands it will certainly say that this is custom and it is impossible for the under-raiyats to prove anything else. Why has not the mover of the amendment also added—

"Notwithstanding that he is not only recorded in the record-of-rights as an occupancy raiyat but is also held by the Civil Court to be an occupancy raiyat?"

Why has he excluded this proviso? It is the Settlement Officer who can correctly record the particulars; as he has ample opportunities of finding out the truth and of making enquiries from persons who do not generally come to give evidence.

Moreover, I object to this amendment on the ground that it is not in order, because it proposes to amend or restrict section 103B which is not one of the sections which is amendment by this Bill. For all these reasons, I strongly oppose this motion.

Babu AKHIL CHANDRA DATTA: May I rise, Sir, on a point of personal information? I am quite prepared to withdraw my amendment if Mr. Mumin will be pleased to place this letter of the Settlement Officer of Jessore before the Advocate-General for opinion whether, under the circumstances mentioned in that letter, under-raiyats can as a matter of law, be described as occupancy raiyats.

Mr. PRESIDENT: If you want to withdraw your amendment you can do so without any condition.

Babu AKHIL CHANDRA DATTA: No, Sir. That is not what I am prepared to do.

The motion of Babu Akhil Chandra Datta was put and a division taken, with the following result:—

AYES.

Bagchi, Babu Romes Chandra.
Banerjee, Babu Premetha Nath.
Banerjee, Babu Jitendralal.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Bose, Mr. Subhas Chandra.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Hakzar Rahman.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakanath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.
Ray, Dr. Sidhan Chandra.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Nalinirenjan.
Sattar, Khan Sahib Abdus.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Bash, Mr. A. J.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Maulvi Azizur.
Rehman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prasanna Deb.
Rauf, Maulvi Syed Abdur.
Ray Chaudhuri, Mr. K. C.
Reid, Mr. R. N.
Ray, Mr. Bijay Prasad Singh.
Sachse, Mr. F. A.
Sarker, Rai Sahib Rebati Mohan.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 34 and the Noes 43 the motion was lost.

Mr. PRESIDENT: Before I adjourn for prayer I should like to know if the members would like the House to re-assemble after the adjournment. (Cries of "No,", "No.".) I would, however, make my position clear. I find that we cannot at this stage take up amendments Nos. 911 to 931, and I think we can very profitably put off the discussion on these amendments till we have discussed clause 23, because our decision on that clause will have a bearing on the discussion of these amendments. I, therefore, think that we should

skip over these amendments and go over to amendments Nos. 932—934. So, there is only one amendment to be dealt with, and I do not know if that is going to be moved. If the members against whose names the amendment stands do not want to move it, then I think I should adjourn the Council till to-morrow.

The following amendment was called but not moved:—.

Srijut BIJAY KUMAR CHATTERJEE, Maulvi KASIRUDDIN AHMAD and **Mr. E. T. McCLUSKIE** to move that in clause 32, proposed section 49, shall be omitted.

Mr. PRESIDENT: To-morrow, I propose to take up clause 23. It deals with the one big question of transferability which the House should like to dispose of before taking lesser details into consideration. Necessary sanctions have now been obtained to enable us to proceed with the clause.

Adjournment.

The Council was then adjourned till 2-45 p.m., on Wednesday, the 22nd August, 1928, at the Town Hall, Calcutta.

[illegible] of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Wednesday, the 22nd August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (RAJA MANMATHA NATH RAY CHAUDHURI, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, Minister, and 107 nominated and elected members.

Starred Questions

(to which oral answers were given).

Ayurvedic Committee.

*69. **Mr. JOGESH CHANDRA GUPTA:** Will the Hon'ble Minister in charge of Department of Local Self-Government be pleased to lay on the table a copy of the report of the Ayurvedic committee appointed by the late Sir Surendranath Banerjea?

MINISTER in charge of DEPARTMENT of LOCAL SELF-GOVERNMENT (the Hon'ble Nawab Musharruf Hosain, Khan Bahadur): No, as the report is still under consideration.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Minister be pleased to state how long is the report under consideration and when is the consideration likely to be finished?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I am not in a position to say when it will be finished.

Dr. BIDHAN CHANDRA ROY: Will the Hon'ble Minister be pleased to state if the report is being considered by the Government or is there any other expert committee that is considering it?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: It is being considered by Government.

Gambling in Contai.

*70. **Babu MAHENDRA NATH MAITI:** (*a*) Is the Hon'ble Member in charge of the Police Department aware of the fact that gambling has spread all over the important *bazars* and fairs of the Contai subdivision?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state whether the Government are considering the desirability of introducing the Gambling Act as early as possible in the Midnapore district?

MEMBER in charge of POLICE DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (*a*) and (*b*) Government are informed that there is considerably less gambling in Contai subdivision than was the case two years ago, and that there is no general desire for a wide extension of the Gambling Act throughout the district of Midnapore. They therefore do not at present propose to extend the Act to any part of the district in which it is not now in force.

Classes of accommodation of police officers travelling on duty.

*71. **Mr. JOGESH CHANDRA GUPTA:** Will the Hon'ble Member in charge of the Police Department be pleased to state in what class, in trains and steamers, Inspectors, Sub-Inspectors, Assistant Sub-Inspectors and sergeants are allowed to travel?

The Hon'ble Mr. W. D. R. PRENTICE: These officers are considered to be entitled to the following classes of accommodation when travelling on duty:—

(1) Inspectors and sergeants of the Bengal Police and Calcutta Police and Sub-Inspectors of the Calcutta Police—By rail second class. By steamers second class or first class if there is no second class.

(2) Sub-Inspectors of the Bengal Police—By rail intermediate class if available (third class on Darjeeling-Himalayan Railway, except on Kishenganj extension where intermediate class is allowed); lower class if there are two classes; second class if there are three. By steamer lower class if there are two classes; middle class if there are three; third class if there are four.

(3) Assistant Sub-Inspectors of the Bengal Police and Calcutta Police—By rail intermediate class if available; lower class if there are two classes; third class if there are three. By steamer as in the case of the Sub-Inspectors of the Bengal Police.

Mr. JOGESH CHANDRA GUPTA: With reference to answer to question No. 2, that is, lower class if there are two classes; second class if there are three; and by steamer lower class if there are two classes, will the Hon'ble Member be pleased to state what does he mean by those two classes and the lower class?

The Hon'ble Mr. W. D. R. PRENTICE: If there is first class, second class and if there is second class, third class.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state if the Sub-Inspectors of the Bengal Police are at all entitled to travel by first class or second class?

The Hon'ble Mr. W. D. R. PRENTICE: No, I don't think so.

Dr. PRAMATHANATH BANERJEA: Will the Hon'ble Member be pleased to state what is the principle on which a distinction is drawn as regards travelling allowance between Sub-Inspectors of Calcutta and Sub-Inspectors of the Bengal Police?

The Hon'ble Mr. W. D. R. PRENTICE: Under Subsidiary Rule 24 officers are divided into four grades according to pay and usually travelling allowance is given by the grade pay. The pay of the Sub-Inspectors of Calcutta Police falls in one and the pay of a Sub-Inspector in Bengal Police falls in another.

Unstarred Questions

(answers to which were laid on the table).

Belur Railway disaster.

57. **Mr. P. C. BASU:** Will the Government be pleased to state—

(*i*) whether the report of the inquiry into the Belur Railway disaster held by the District Magistrate of Hooghly under Rule 20 of the Railway Accident Rules has been forwarded to (*a*) the Government of India and (*b*) the Secretary of State;

(*ii*) whether the Government of Bengal have received a copy of the report of the (*a*) Agent of East Indian Railway, and (*b*) Senior Inspector of Railways on the Belur Railway disaster?

MEMBER in charge of POLITICAL DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (*i*) Not by this Government.

(*ii*) (*a*) The Agent informed Government of the occurrence in a letter, dated 9th July.

(*b*) Yes.

Mr. D. N. ROY: Will the Hon'ble Member be pleased to lay the letter of the Agent and the report of the Inspector of Railways on the table?

The Hon'ble Mr. W. D. R. PRENTICE: No.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state what objection is there to laying that report on the table?

The Hon'ble Mr. W. D. R. PRENTICE: I explained in answer to a similar question on a previous occasion that railways are a central subject and we are not the proper authority to deal with those matters.

Veterinary Assistant Surgeons.

58. Khan Bahadur Maulvi AZIZUL HAQUE: With reference to the reply given on the 31st July, 1928, to unstarred question No. 5 (*f*), will the Hon'ble Minister in charge of Department of Agriculture and Industries be pleased to state how long it is likely to take to arrive at a final conclusion in the matter?

MINISTER in charge of DEPARTMENT of AGRICULTURE and INDUSTRIES (the Hon'ble Nawab Musharruf Hosain, Khan Bahadur): The member is referred to the reply given to unstarred question No. 16 (*b*) asked by Babu Saral Kumar Dutt at the meeting of the Council held on the 1st instant.

Election of Executives of Bankura Local Board.

59. Srijut BIJAY KUMAR CHATTERJEE: (*a*) Is the Hon'ble Minister in charge of Department of Local Self-Government aware that during the last election of the Executives of the Bankura Sadar Local Board held on 2nd July last, Mr. Hart, the District Magistrate, and Babu A. R. Bose, Sadar Subdivisional Officer, actively canvassed for votes?

(b) Is it a fact that one Bharat Chandra Hansda, a nominated member of the Sadar Local Board, was summoned by the Circle Officer of Chatna Circle through the President of the Dhabani Union Board, police-station Chatna, to appear before him at Chatna in the evening of the day preceding the election and that dafadar and chaukidar were sent to escort him, and these men, together with the Circle Officer, brought the said Bharat Chandra Hansda to the Subdivisional Officer on the election day by the Down Gomoh Passenger?

(c) Is it a fact that Babu Probodh Chandra Bose, one of the elected members of the Sadar Local Board, was brought in a car to the private residence of the Sadar Subdivisional Officer in the evening of the day preceding the election where the Subdivisional Officer directly canvassed for recording Probodh Babu's vote in favour of his nominee and tried to interfere with his free choice?

(d) Is it a fact that Babu S. P. Bhattacharjee, the Circle Officer of Simlapal Circle, and one of the nominated members of this Board saw Babu Madan Mohan Singha Chowdhury, zamindar of Simlapal, and one of the elected members of the said Board, at the latter's house and escorted him to Bankura on 1st July, the day preceding the election?

(e) If the answers to (a), (b), (c) and (d) are in the affirmative, will the Hon'ble Member be pleased to state what action has been or is being taken against these officers in question?

(f) If the answers to (a), (b), (c) and (d) are in the negative, are the Government considering the desirability of making an immediate inquiry into the matter?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: (a) No.

(b) As congress volunteers were trying to prevent the member in question from attending the election, he asked the Circle Officer to escort him to Chatna on the way to Bankura. The Circle Officer sent him a message advising him to go by way of Asurabad. Later on, the Circle Officer went to his village, but found that he had already gone to Asurabad with the dafadar as escort. The Circle Officer met him at Chatna and they went together to Bankura.

(c) No. Babu Probodh Chandra Bose, who is a Union Board President, went to see the Subdivisional Officer on the 1st July on Union Board business. The Subdivisional Officer did not canvass him.

(d) The Circle Officer saw Babu Madan Mohan Singha Chowdhury, at his house on the 1st of July. He went there on Union Board business as the zamindar is the President of the local Union Board. Subsequently, the zamindar took the Circle Officer in his motor-car from Simlapal to Bankura.

(e) and (f) Government do not consider that any action or any enquiry is needed.

Srijut RADHA GOBINDA RAY: With reference to his answer that the Congress volunteers were trying to prevent Bharat Chandra Hansda from attending the election, will the Hon'ble Minister be pleased to state where did he get this information and who gave him this information?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I want notice.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

Mr. A. K. FAZL-UL HUQ: On a point of order with regard to to-day's business. I notice that in at least one instance one of the amendments of which I gave notice has been wrongly printed and in such a way that it has rendered the amendment almost meaningless but I do not complain of it having regard to the fact I am not going to press it. There were other amendments of which notices were given—I have got copies of them—but I find that they have not been printed and I presume that they have been disallowed. This being an important piece of legislation and if members give notices of amendments which substantially comply with the rules, are you going to rule out those amendments merely because they contain some technical questions? Some of the amendments raise questions of most vital importance and as far as I can see they are in perfect order and I have got no information as to why they have been disallowed. So I submit that since the discussion is going to last for some days you should reconsider the whole matter and allow amendments to be moved provided they do not violate the rule on some vital points.

Mr. PRESIDENT: The practice is that when an amendment, or for the matter of that anything, is disallowed by me the member, who had given notice of the same, is entitled to a reply in which reasons for the step taken are given. Do you mean to say that in this case you did not receive any such communication from the Legislative Department?

Mr. A. K. FAZL-UL HUQ: Except in the case of those that I brought to the notice of the Registrar. As to those I received a letter simply saying that you are not prepared to reconsider your decision. As regards the others I have absolutely no information.

Mr. PRESIDENT: If I am not mistaken, it is evident from your statement that what you referred to was the second letter and you must have written in reply to the first to reconsider the matter. I also find from the office papers that the letter was really addressed to you and all the reasons for the action I had taken were given in it.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, you gave a decision concerning one of my amendments on the ground that it was outside the scope of the Bill. Is it open to us to show to you either in the Council Chamber or outside that it was not outside the scope of the Bill?

Mr. PRESIDENT: It is possible inside the House. It was clearly your duty to have written to the Secretary about it, requesting that the matter might be reconsidered.

Khan Bahadur Maulvi AZIZUL HAQUE: I hope you will not use your power of limitation. You can as well permit us to do so now.

Mr. A. K. FAZL-UL HUQ: What I gather from your decision on the point of order is that it is open to us now to represent the case of those amendments that were disallowed either to the Secretary or to the Registrar and with your permission to bring the fact to your notice.

Mr. PRESIDENT: My position is this: There is a recognised rule to the effect that amendments have got to be sent within a specified time and the time which was so specified having been over, you are not entitled to send in any more amendments.

The following amendment was called but not moved:—

Mr. D. N. ROY to move that in clause 23, for the proposed sections, the following shall be substituted, namely:—

26A. (*1*) When any occupancy holding or portion of a holding is transferred by private sale, the transferee or his successor in interest shall within two years from the date of the commencement of this Act or within one year from the date of the transfer, whichever is later, apply to the landlord to whom the rent of the holding or portion is payable for registration of the transfer. The maximum fee payable on such registration shall be a sum equal to 25 per centum of the consideration money or to six times the annual rent of the holding or portion thereof, whichever is greater.

Explanation.—In the case of land held on a produce rent the annual rent shall be calculated on the basis of the average rate of cash rent paid by occupancy raiyats for similar lands in the village.

(*2*) If, in any such case, the landlord accepts the fee authorised by sub-section (*1*), his consent to the transfer and to any distribution of the rent thereby rendered necessary shall be deemed to have been given.

(*3*) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor in interest may within one month from the date of the landlord's refusal, or from the date specified in sub-section (*1*), whichever is later, deposit such fee in the civil court of the lowest pecuniary jurisdiction within whose local jurisdiction the holding is situate, and, at the same time, apply for registration of the transfer. The court, after giving notice to the landlord to appear and be heard, shall decide whether the landlord has any good and sufficient reason to refuse his consent to the transfer he shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall by an order in writing, declare that the transfer has been duly registered. Such declaration shall have the same effect as an acceptance of the registration fee by the landlord under sub-section (*2*).

Explanation.—In considering whether the landlord has good and sufficient cause to refuse his consent to the transfer, the court shall have regard to the following circumstnces :—

(*i*) whether the transferee is a cultivating raiyat or is acquiring the land for the purpose of cultivation;

(*ii*) whether the transferee resides within, or in the vicinity of, the village in which the holding is situated;

(*iii*) whether the transfer results in the creation of unreasonably small holdings;

(*iv*) whether in the case of a transfer of a portion of a holding the proposed distribution of rent is accepted by the landlord and, if not, whether it is just and proper;

(*v*) whether there are any arrears of rent due in respect of the holding;

(*vi*) whether the transferee is a habitual defaulter of rent or a person who, for any other reasonable cause, should not be made a tenant of the landlord without his consent; and

(*vii*) whether there has been an understatement of the consideration money which affects the amount of the fee payable under sub-section (*1*).

(4) Save as provided in this section no transfer of an occupancy holding or portion of a holding otherwise than by succession or by sale in execution of a decree for arrears of rent shall be valid against the landlord of the holding unless and until he has consented thereto.

(5) An appeal shall lie from any order passed under sub-section (3).

Maulvi ASIMUDDIN AHAMAD moved that in clause 23 for proposed section 26A to 26G the following shall be inserted, namely:—

"26 A (1) The holding of an occupancy raiyat or a share or a portion thereof, with the right of occupancy therein shall be capable of being transferred in the same manner and to the same extent as other movable property.

(2) Such transfer of a holding of an occupancy raiyat or a share or a portion thereof with the right of occupancy therein shall be subject to the same provisions as far as landlords' fee concerned as mentioned in sections 12, 13 and 15 of the said Act."

Mr. JOGESH CHANDRA GUPTA: On a point of order. With regard to this portion of the amendment that "26A (1) The holding, etc., shall be capable of being transferred in the same manner and to the same extent as other movable property." Is the word "movable" correct?

Mr. A. K. FAZL-UL HUQ: I ask the permission of the President to amend the amendment.

Mr. PRESIDENT: The word "movable" is apparently a printing mistake.

Maulvi ASIMUDDIN AHAMAD spoke in Bengali in support of his amendment, the English translation of which is as follows:—

"Sir, my object in moving this amendment is that the tenants have always had the right of transfer of land. They enjoyed that right under Hindu and Moslem rule and also under British rule before Permanent Settlement. Even after the Permanent Settlement they have been exercising this right without any opposition from landlords. It is thus clearly proved that tenants have always possessed this right. The question of conferring a new right on them as contemplated in the proposed Bill, therefore, does not arise. Many kinds of deeds are executed by the tenants within court and outside and landlords do not claim any fee therefor, nor has any question arisen on the subject. The landlords in Bengal derive an annual profit of 16 crores of rupees from land. Any proposal to give them more money by legislation must be

regarded as oppressive. Sir, transfer of land means passing of land from the hands of a ruined tenant into the hands of a well-to-do tenant, for, generally no tenant will sell his land unless he is compelled by necessity. It is thus seen that transfer of land is really to the profit of the landlord. It is unjust and oppressive to compel the buyer of a piece of land to pay twice—to the seller and to the landlord. I do not understand for what reasons Government propose to give more of the money of the poor tenants to the landlord by means of legislation. If the proposed Bill passes into law the landlord will get Rs. 2,500 from a land of the value of Rs. 1,000 within 10 years, in case it changes hands 10 times within that period. The effect of this will be to altogether ruin the tenants. I move, therefore, that if any fee is to be charged for transfer of land it should not be less than Rs. 2 and not above Rs. 100 under any circumstances."

The following amendments were called but not moved:—

Maulvi KADER BAKSH to move that in clause 23 for the proposed sections 26B to 26J, the following sections be substituted, namely:—

"26B. The holding of an occupancy raiyat together with the right of occupancy therein shall be capable of being transferred or bequeathed, either in whole or in part, in the same manner and to the same extent as other immovable property.

26C. The transferee or the legatee, as the case may be, shall be recognised by the landlord of the holding as a tenant in the place of the transferor, on the transferee tendering to the landlord the landlord's transfer fee which will be equal to ten times the annual rent of the holding or of the transferred portion or share or the portion or share bequeathed. The landlord shall be entitled to recover the mutation or transfer fee by suit from the purchaser as arrears of rent with interest or damage at the rate not exceeding 6 per cent. per annum if it is not paid within 90 days of the date of the purchase or within 90 days of the date of possession by the legatee or the date of the probate or letter of administration, whichever is earlier. No transfer fee will have to be paid by a natural heir.

26D. The provisions regarding payment of rent as laid down in section 54 and the provisions relating to the deposit of rent as laid down in sections 61 to 64 shall apply *mutatis mutandis* to the payment of landlord's transfer fee so far as applicable.

26E. (*1*) When the holding of an occupancy raiyat is sold either in whole or in part in execution of a decree for rent, or when a mortgage of a holding of an occupancy raiyat or a portion or share thereof is foreclosed, and when the purchaser or decree-holder as the case may be, is not the sole landlord, the Court, before confirming the sale or making

order absolute for foreclosure, will require the purchaser or the decree-holder of the foreclosure decree as the case may be, to deposit in Court for payment to the landlord of the holding the landlords' transfer fee equivalent to ten times the annual rent of the holding or of the portion or share thereof, together with a process fee of the prescribed amount for sending a notice upon the landlord under clause (2).

(2) When the sale has been confirmed or the decree or order absolute for foreclosure has been made, the Court shall send a notice to the landlord or landlords requiring him or them to appear either personally or by duly authorised agents and to receive the amount of the transfer fee deposited in Court.

(3) When an application is made on behalf of a landlord or a body of landlords for the payment of the transfer fee deposited in Court, the Court shall pass order for such payment after satisfying itself that the amount is due to the applicant or applicants, and in the case of more applicants than one in such proportion as the Court may decide.

26F. When a portion or share of a holding is bequeathed or transferred, the rent of that portion or share shall for the purpose of determining the landlords' fee, bear the same proportion to the rent of the entire holding as the area or share transferred bears to that of the entire holding."

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 23 for proposed sections 26B—26H the following shall be substituted, namely:—

"26B. The holding of an occupancy raiyat together with the right of occupancy therein shall be capable of being transferred or bequeathed, either in whole or in part, in the same manner and to the same extent as other immovable property.

26C. The transferee or the legatee shall be recognised by the landlord of the holding as a tenant on the transferee tendering to the landlord, a landlord's transfer fee, which will be equal to ten times the annual rent of the holding or of the transferred portion or share. The landlord will be entitled to recover the mutation fee by suit from the purchaser as an arrear of rent, with such interest or damages as the court considers reasonable, if it is not paid within 90 days of the date of the purchase, or in the case of a bequest within 90 days of the date of possession by the legatee or the date of the probate or letters of administration, whichever is earlier. No transfer fee will have to be paid by a natural heir.

26D. The provisions regarding payment of rent laid down in section 54 and the provisions relating to deposit of rent as laid down in sections 61 to 64, shall apply *mutatis mutandis* to the payment of landlord's transfer fees so far as applicable.

26E. When an instrument purporting to be an instrument of transfer of an occupancy holding whether of the entire holding or a

portion or a share thereof, is registered, a notice in the prescribed form will be served upon the landlord or landlords of the holding by the registrar by registered post. The cost necessary for service of notice as may be laid down by rules made by the Local Government will be paid by the person who files the instrument for registration along with other registration costs.

26F. (*1*) When the holding of an occupancy raiyat is sold either in whole or in part in execution of a decree other than a decree for rent, or when a mortgage of a holding of an occupancy raiyat or a portion or share thereof is foreclosed, and when the purchaser or the decree-holder in the case of a sale or the decree-holder in the case of a decree for foreclosure, is not the sole landlord, the court before confirming the sale or making an order absolute for foreclosure will require the purchaser or the decree-holder of the foreclosure decree, to deposit in court for payment to the landlord of the holding the landlord's transfer fee, equivalent to ten times the annual rent of the holding or of the portion or share thereof, with a process fee of the prescribed amount for serving a notice upon the landlord under clause (*2*).

(*2*) When the sale has been confirmed or the decree or order absolute for the foreclosure has been made, the court shall send a notice to the landlord requiring him to appear and receive the amount of the transfer fee deposited in court.

(*3*) When an application is made on behalf of a landlord or a body of landlords for the transfer fee deposited in court, the court shall order payment thereof, after satisfying itself that the amount is due to the applicant or applicants, and in the case of more applicants than one in such proportions as the court may decide.

26G. When a portion or a share of a holding is transferred or bequeathed, the rent of that portion or share, shall for the purpose of determining the landlord's transfer fee, bear the same proportion to the rent of the entire holding as the area of the share transferred bears to that of the entire holding.

26H. (*1*) In sections 26C, 26D, 26F and 26G "transferee" includes the successors in interest of the transferee, and in sections 26C and 26F "purchaser" includes the successors in interest of the purchaser and "mortgagee" includes the successors in interest of the mortgagee.

(*2*) In the foregoing sections "transfer" does not include—

(*i*) partition,

(*ii*) lease or simple mortgage,

(*iii*) usufructuary mortgage,

(*iv*) mortgage by conditional sale, until a decree or order absolute for foreclosure is made.

(3) Neither the acceptance of the landlord's transfer fee nor the making of an application to the court under the provisions of the foregoing sections shall operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof."

Khan Bahadur Maulvi AZIZUL HAQUE: I know the full consequence of this amendment and it must not be thought that I do not foresee what would be the fate of this amendment. Knowing the consequence full well I give my full support to this amendment. I consider that we will be committing grievous wrongs to the tenants of Bengal unless the majority in the Council satisfactorily decide the question of transferability which has all along been fraught with many difficult problems. And one of those difficult problems is what should be the landlord's fee in Bengal. This question has been under discussion for the last hundred years but as yet it has not been solved and what we are going to do, would not give any advantage to the tenants of Bengal. I am not sure of the fate of the other amendments but one thing is definite, namely, that whatever shall be done here will affect the future of the millions of people of this Presidency. Lest it may be thought that the mover of this amendment has started an extraordinary, novel and preposterous doctrine to-day when Government are coming forward with a proposal for a salami of 25 per cent. I will remind the House that this identical suggestion was made in the year 1880 when the Rent Commission made a detailed enquiry as to the landlord's fee on transfer. Compared to the members of the Rent Commission, whose ability and attainments are known to the whole Presidency, we to-day must appear as small pigmies. After detailed enquiry this Rent Commission came to the conclusion that transfers should be permitted without restriction and without any consent of the landlord, but that if anything is to be given to the landlord it must be only a sum of Rs. 2 in the minimum and of Rs. 100 in the maximum. As regards the landlords fees they thought that it had justification only to give a notice to the landlord for purposes of mutation. The principle being once accepted that there can be a transfer of occupancy right the point for consideration is whether the landlord is entitled to go and ask for a fee from the transferee. That point of view was considered at the time by the Rent Commission who recommended that subject to a minimum of Rs. 2 and a maximum of Rs. 100, a fee should be given as landlord's fee. I quote the recommendation of the Rent Commission:

"We have declared the landlord entitled to a fee upon every registration of a transfer or succession, such fee to be two per centum of the annual rent, but not to be less in any case than one rupee or more than one hundred rupees."

This is what they provided in their proposed section 47. It is a matter which each one of us should seriously consider. It was originally thought on a notice and mutation basis not to make a source of income. It is time for you to consider the reasons and circumstances which gave rise to the theory of landlords' fees. Under the present law the landlord will be entitled to get 25 per cent. of the purchase money from a person who is becoming a tenant whereas Re. 1 or Rs. 2 was considered sufficient for the purpose by the Rent Commission. I will once again remind the House of the responsibility that has been entrusted to us and I fully give my support to the amendment.

Mr. A. K. FAZL-UL-HUQ: To many in this House the suggestion made in this amendment might seem ridiculous, perhaps even absurd. But as my friend Khan Bahadur Azizul Haque has pointed out, we are here definitely to assert the rights which we think legitimately belong to the tenants, and of which they have been deprived so long, and rectification of which state of affairs is now overdue. If we support this amendment it is not in the hope—even in the forlorn hope—that this will find many supporters in this Council, but because we wish at this moment to sound the key-note to the position that we take up with reference to the transferability of occupancy holdings. We want to make it clear to this House, and through the members of the House to the world outside, that there has really been an awakening of masses and the pathetic contentment in which they have been living so long has been disturbed by force of circumstances which we need not discuss here but of which everyone has got to take a note. It is a suggestion that there should be transferability on a nominal fee and I have to submit that the real key-note of the position is that we should take up the cause of the tenants. With these words I support the amendment.

Babu JITENDRALAL BANNERJEE: I support this amendment because it is the most logical, most comprehensive and the most honest of the whole mass of resolutions of which notices have been given on this matter. And in supporting this amendment I wish to draw pointed attention to the disingenuous attitude which Government has taken up over the question. Government are making a great parade of the fact that they have made occupancy holdings transferable, transferable like every other species of immovable property—subject only to a few necessary provisions and safeguards. But when they proceed to set forth these necessary provisions and safeguards, we find that they neutralise and cancel whatever advantages they might profess to give by making occupancy holdings transferable. One of the hampering and unjustifiable conditions with which they burden transferability is that the transferrer will never get the full value of his

property. He will always be mulcted to the tune of 25 per cent., i.e., one-fourth of the value of his property—will be robbed of it with the help and connivance of the Government—an unthinkable and inconceivable state of affairs in the civilised world! That Government, instead of protecting the rights of the tenant, should be a party to the robbing of the tenant's property is a situation which, I repeat, is unthinkable and is without a parallel in any other part of the civilised world. Another of the hampering conditions is that the transferrer will not be able to sell his property to whomsoever he likes. Henceforth, if somebody sells his property to "A" or "B," landlord may always come in and say, "No, you will have to transfer it to me." This is another unjustifiable and most hampering restriction to which the Government is a party—knowing full well that the right which they now propose to confer is an unthinkable, undreamt of and unimaginable right—a right never known or enjoyed before in the history of the land revenue administration of Bengal! I should like anyone of the Hon'ble Members of the Government to point out from history or from experience another instance where they have given the right of transferability and at the same time said that this right of transferability must not be exercised in favour of the man whom the transferrer chooses. I throw out a challenge to them and I wish that they will take up my challenge. Sir, the whole question of granting salami is based on the old and exploded superstition, that the land is the property of the zamindar. It may so in England; but certainly it was never so in India—either in Hindu or Muhammadan times. At the time of the Manu Sanhita, it was the tiller of the soil who was regarded as the proprietor of the soil: whoever cultivated the land he was the proprietor of the soil.

3-15 p.m.

Again, what happened during the days of Muhammadan Rule and administration? With whom did Todar Mull settle his land revenue? Not with the zamindars. The zamindars were there; but in those days they were looked upon as mere rent gatherers and revenue-farmers: and the settlement of land revenue was made, not with them but with the actual tillers of the soil. These were divided into four classes according to the quality and character of the land which they held, and settlement was made direct with them. It was only under the administration of the British with their abysmal ignorance of the conditions of land tenure in India that we first hear of the superstition that land is the property of the zamindar: and it is only on the basis of that superstition that we hear of the institution of "salami." But once we concede that land is the property of the tiller of the soil, we shall have to concede still further that no 'salami' should be payable on account of land-transfer: or, if any salami is paid at all, it must be of a very nominal amount, barely enough to cover the cost

of mutation. The zamindars can claim nothing further from history, from principle, or from logic. But of course, it is up to the Government to say that they will give the go-by to history, logic and principle; that they will legislate off-hand out of their own imagination and just to suit the convenience of a class of people whose interests, Government thinks, are bound up with theirs! And if Government takes up such an attitude, we are helpless. However, this question will come up again for discussion: and so I do not like to exhaust my arguments, but would rather wait and see what arguments my friends adduce so that I may be in a position to meet them again in future.

Mr. F. A. SACHSE: This amendment proposes to do away with the new transfer fees other than nominal fees or mutation fees; it also would do away with pre-emption. It leaves the landlord no say at all as to what tenants he is bound to accept. In 1885 it was seriously proposed to make occupancy rights transferable and also to make this provision for pre-emption. The idea was given up because the legislators of that time thought that they did not know enough of local custom. Now that 43 years have passed and records-of-rights have been prepared for nearly all districts of Bengal, we think we know something about local custom and we have drafted all these provisions with the purpose of converting common practice into law and also of making the law clearer and more definite. We have been guided by what we consider to be the local custom in a majority of the districts of Bengal. We quite admit that our Bill will not suit the custom of every district, much less every subdivision of a district, but it is quite impossible to have a separate Tenancy Act for each district. Therefore we have drafted these provisions with the idea that they will suit the majority of the districts of Bengal.

I am sorry that we have reached at such an early stage the much disputed question of what the landlord's fee should be. It would be far better if the House first of all decided the main principles—Whether we should confer the right of transfer on the tenants at all. Secondly whether transferability should apply to part-holdings, and shares of holdings, or only to 16-anna holdings. Then the House should decide whether the fee should be collected by the landlord themselves amicably or by rent suits, or whether the Collectors will do this work for them. We have also to decide what protection, if any, the landlord is going to have against undesirable tenants being thrust upon him and how we are to prevent the landlord being cheated of what the law gives him.

The people who have drawn up this Bill have paid their chief attention to drawing up a workable procedure, which will cover all the points. And that is why I suggest that our sections as they are

in the Bill are far better than any one of those new drafts, which try to put in about ten lines what we have done in 4 or 5 pages. Sir, all these omnibus amendments will be very difficult to deal with and it will be better if we deal with the separate points as they come up on the agenda paper.

As regards the amount of fee, we have put this amount at 25 per cent. in this Bill simply because from our experience and from enquiries made through District Judges, District Magistrates, and Settlement Officers we find that in most of the districts of Eastern Bengal the fee is certainly 25 per cent. at present and sometimes more than that. In North Bengal it is probably nearly always 25 per cent. and I know that in the Attia Pargana and elsewhere in addition to 25 per cent. the raiyat has to pay an enhanced rent of four annas per pakhi. In Western Bengal the fee used to be less than 25 per cent. Anyhow the House should accept our procedure and then decide what the transfer fee should be and on what basis it should be calculated in each kind of transfer.

Babu NALINIRANJAN SARKER: I rise to oppose the motion moved by Maulvi Asimuddin Ahamad, for I think that if this amendment were carried, it would mean the expropriation of one party at the cost of another.

There are three distinct considerations which should weigh with us in arriving at a suitable formula for amending the old Tenancy Act, e.g., Law, equity and practical need of reconciling the opposite interests. To consider the legal aspect first, all authorities are agreed that the right of free transfer is the hall-mark of an absolute proprietary right. Even the most ardent champion of the raiyats cannot contend that the raiyat possessed such right at any time in the history of our land laws. The permanent settlement invested the landlords with that right though it was careful to reserve for the State the "right of ensuring the protection and welfare of the raiyats and other cultivators." It was on the strength of this qualification that the State considered itself competent to interfere in the relations between landlord and tenant and secure for the latter the essential safeguards of his well-being, namely, fair rent and fixity of tenure; further than this the State could not go without hesitation. Indeed, the right of transfer was insisted on so early as the year 1885. But the opinion of Sir John Shore that the occupancy right does not include the right of sale of transfer was reaffirmed. But, during the years following the enactment of the present Act, popular sentiment has strengthened the cause of the raiyat and it is to-day expedient that whatever may be the exact legal position, the raiyat should be afforded some means of converting his rights of occupancy into their money equivalent. The problem now is how to reconcile the legal rights of the zamindar with the equitable claims of the raiyats?

Happily, Sir, the issues that are involved in their questions of transferability have been narrowed down to a considerable extent. The zamindars no longer emphasise their right under the permanent settlement or oppose the right of transfer as an infringement of such right, nor does anybody contend with the same vehemence that the cultivable area will, as a result of this change, pass into the hands of the non-agricultural capitalists leaving the poor agriculturists as a class of mere landless labourers. It seems if the zamindar can retain his old legal and long-enjoyed right, in however limited a form, leaving him some share in the appreciation of land values and some choice, however meagre, in regard to his tenants, he would not raise any determined opposition to a reform on which the country is unmistakably keen. He will reconcile himself to the changed condition and willingly await the improvements that such changes might bring to the agriculture of the province.

To realise what a valuable concession the new reform would mean to the raiyats and what little of drastic change it makes upon past custom it is necessary to examine how the position stands at present.

The existing law does not confer on the raiyat any right to transfer his holding. The zamindar is perfectly within his right to withhold his assent to any transfer without adducing his reasons.

The fact that the occupancy holdings are extensively bought and sold and recognised by the zamindar on receipt of a certain consideration does not prove any right of such sale on the part of the raiyat, because full right to refuse to recognise any such sale remained in the landlord and also the right to bring the land under his khas possession, if the entire holding was so sold. As both law and custom now stand, the transaction between the old and the new tenant does not detract from the proprietary right of the zamindar over the occupancy holding. The transaction may be interpreted as an indirect form of abandonment of the holding by the raiyat and the price that the raiyat gets from the purchaser is the price not of the sale of the holding but of its abandonment to the zamindar leaving the path clear for the intending tenant to make his settlement with the zamindar.

There is however one criticism which has to be answered. It is contended that the zamindar might be indifferent to the change of tenant so long as the rent due to him are paid just as before. This contention, it will be seen, is not so much a criticism of the present measure as a repetition of the theory of the zamindar being no more than a mere receiver of rent. As I have pointed out at length, that theory is legally untenable, historically untrue and not essential to the better working of our systems of land tenure. It is only reasonable that in formulating the new legislation we do not flatly deny the proprietary right of the zamindar but only modify it in order to suit the exigencies of the present situation. The real test of the

wisdom of this compromise lies in analysing the gains and losses of either party. In purchasing a piece of land the raiyat had to rely on the sweet will and pleasure of the landlord to recognise him as tenant, and in so far as land is vital to him, his life may be said to have depended on the whim of the zamindar. Under the proposed law he can effect his purchase without waiting on the landlord, the recognition by the zamindar taking place simultaneously and automatically. The only price that the new tenant would have to pay for this privilege is a small percentage on the unearned value of the land. Far from the risk of losing his consideration money as under the old conditions he is now assured, in the event of the landlord preferring to exercise his proprietary rights, of getting a compensation in addition to his consideration money. It need hardly be mentioned that when consent to a transfer can be had as a matter of legal right the new tenant will not be subject to the penalties and indignities which a vindictive landlord could easily heap upon him under the old system. Viewing it from the standpoint of the landlord though he can no longer exercise the same unrestricted choice in regard to his tenants he is still enabled in extreme cases of getting undesirable persons out of his way by paying the prescribed amount.

The last mentioned right must in fairness be conceded to the zamindar and I am at a loss to understand how this can be opposed by those very persons who have maintained on the floor of this House that no customary or legal right should be taken away from anybody or any person without giving them an adequate compensation. There are numerous advantages which agriculture and agricultural classes will derive from a working compromise such as this. As the position is to-day the raiyat is at the mercy of the money-lender inasmuch as the only security which he possesses cannot be utilised for the purposes of raising loans at a moderate rate of interest. The increase and the cheapening of agricultural credit will give a great impetus to scientific cultivation. There will be a more congenial soil for the growth of land-mortgage banks without which the future of agriculture would be far from encouraging.

Those individuals who have been sticking to their land for no other reason than that they cannot part with it will hereafter find it possible to transfer it to men willing and able to put it to better use. It is unreasonable to fear that all these changes would lead to the creation of a class of landless labourers. Where larger pieces of land are acquired by a single cultivator he must perforce sublet the excess portion to others. The capitalist who invests a large portion of his means in acquiring occupancy rights cannot help creating labour for the cultivating classes. On the whole it would mean that only those classes will remain attached to land who can take the task of cultivation more seriously than the present disorganised mass of people who are generally known as the agricultural classes.

It remains for me to say a word in answer to those who affect communistic views in the discussion of this problem.

They attack the Permanent Settlement and would deprive the zamindar of his unearned income—leaving him only as a rent-receiver to be expropriated totally at a future date. If that was their real desire I for myself would have gone to the same lobby with them. But, in fact that is not their aim. The problem that the present section proposes to solve is—the clashing interests between the zamindars and the raiyats and not that between the zamindars and the nation as a whole.

Expropriation of the unearned income of the landlords comprising 10 per cent. of the population can be justified only if the benefit accrues to the entire nation. It cannot be done in the interest of a particular section, the occupancy raiyats, comprising 30 per cent. of the population. The ordinary cultivators of Bengal number three crores. Almost half of them are occupancy raiyats as distinct from under raiyats giving 1½ crores, that is, 30 per cent. of the people. Their interests clash with the other half, the cultivators—their sub-tenants. They demand the curtailment of the rights of the zamindar not on the grounds that such curtailment is demanded elsewhere in the world. In those countries where land has been nationalised after the War, it has been done on the principle that there should be no property in land. The tenants there have not asked for the right of transfer; all that they have asked is fixity of tenure. There has been complete repudiation of the idea of proprietary right in land. But what do we see here? Permanent Settlement is condemned, the zamindar is to be deprived of his rights, not on the ground that there should be no property in land but because another section of the people wants that right. Under such circumstances it is a concession beyond their wildest dreams that they have been offered, viz., 80 per cent. of the money value of a right that did not belong to them. To ask for the remaining 20 per cent. that the zamindar is allowed to retain out of what was his exclusively, indicates an undeniably unreasonable frame of mind.

Let me again remind the House before I close that this amendment referring as it does to a provision in the Bill under consideration, which is essentially of the nature of a compromise, it is open to the attacks of both the sections which it seeks to reconcile. But there is little to be gained from exaggerating one's own grievances and calling upon the other side to make all the sacrifices. To get away from such obsession is most essential if the discussions of the House are to bear any fruit. I would implore every section to bring a sympathetic understanding of the opposite view to bear on the solution of this problem.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, one reason put forward in support of this amendment is that as the raiyat is the proprietor of the soil, he should be allowed to transfer his land on payment of a nominal fee as prescribed in this amendment and as provided in sections 12, 13 and 15 of the Act. So far as this argument is concerned, my friend, Mr. Jitendralal Bannerjee, being carried away no doubt with the vehemence of his eloquence—he is always eloquent—has asserted that as the raiyat is the proprietor of the soil, therefore the amendment ought to be accepted. If I could follow him aright, he said "who is the proprietor of the soil, the zamindar or the raiyat?" Well, if he had put his question in another form "who ought to have been considered to be the proprietor of the soil in 1793," I could understand him. Much could be said on both sides as to whom the proprietary interest of the soil should have been given in 1793. But that is an academic question, that is a question which Mr. Bannerjee might well discuss in his class room or learned professors delivering their lectures in the University on economics or history might place before their students. That is not a question for practical legislators like the members of this House who have to deal with existing rights. But is there any doubt that in 1793 certain rights were conferred on the zamindars? Well, Sir, rightly or wrongly, from 1793 onwards the zamindars have been the proprietors of the soil. (A VOICE: Question.)

Babu JITENDRALAL BANNERJEE: If something wrong had been done, is there any reason that it should be perpetuated?

The Hon'ble Sir PROVASH CHUNDER MITTER: I thank Mr. Bannerjee for his interruption. If he thinks that a wrong has been done, the right way to deal with it is to get rid of the wrong in proper time and place. The amendment of the Bengal Tenancy Act is not the proper occasion for dealing with that supposed wrong. To-day what is the legal position of the zamindar and the raiyat? In 1793 the zamindar was made the proprietor of the soil. (A VOICE: Question.) Under the Permanent Settlement Regulation VIII of 1793 he was undoubtedly made the proprietor and any amount of questioning won't improve the situation; the zamindar was made the proprietor of the soil. But at the same time in the same Permanent Settlement Regulation power was reserved to protect the interest of raiyats, dependant talukdars and others. Then came the Act of 1859; then came the Act of 1869 and then came the Act of 1885; and there to-day we are amending the Act of 1885. To-day what is the legal right of the raiyat? Can there be any doubt that to-day the raiyat does not possess the right of free transfer unless custom gives him the right? Therefore, the practical proposition is the right of the raiyat as he enjoys it to-day—he has not been given the right of free transfer.

Therefore, so far as the argument that because the raiyat ought to have been made the proprietor of the soil 135 years ago, because the legislation of 1793 was wrong, because the legislation of 1859 was wrong, because the legislation of 1869 was wrong, because the legislation of 1885 was wrong, we ought to do something without getting rid of the legislation of 1793, which is the root cause of the supposed wrong is an argument which I trust the House will not appreciate as cogent. This argument does not apply, and cannot apply, to the question we are discussing. There is another aspect of the question, with which I may deal, since the point has been raised by my friend, Mr. Jitendralal Bannerjee. If we want to get rid of the rights conferred in 1793, just pause for a moment and consider its effect on the economic structure of society in our province. Will it not mean an economic cataclysm to the whole province?. Will it not mean that the raiyats of Bengal who to-day pay 14 crores and odd of rupees as their rental will have to pay something like 40 to 50 crores of rupees? Will it not mean that many of the 47 lakhs of tenure-holders who carved out valuable interests from the proprietors, some by payment of heavy bonuses and some by entering into other suitable contracts, will be wiped out? Will it not also mean that most of the 105 lakhs of proprietors will all be ruined if not wiped? Is this the place or the occasion to discuss that question? If that question has to be discussed and as my friend, Mr. Jitendralal Bannerjee, has given notice of a resolution for the discussion of that question, it can be discussed, when that resolution comes up for consideration but I do want to point out that if a matter like that be decided, in the way Mr. Bannerjee would like it to be decided, it will mean that every agriculturist will be pauperised, it will mean the confiscation of the rights of the tenure-holders, it will mean the confiscation of the rights of the zamindars. I may further point out that of the 105 lakhs of proprietors, about half come from Chittagong, Tippera, Noakhali and neighbouring districts, many of them are holders of Noabad taluks, who in many cases pay an annual revenue of Rs. 20, 30, 50 or 100—most of them are co-religionists of Mr. A. K. Fazl-ul Huq and Khan Bahadur Asimul Haque, and these are often men of small means. Do my friends realise the disastrous effect of their suggestion on these men of small means! Instead of discussing these academic questions should we not confine our attention to a discussion of the immediate question with which we are concerned in these amendments? That is a question which requires very careful consideration, but in deciding that question let us not be led away by sentiments, let us not be affected by what ought to have been of 130 years old.

Mr. JOGESH CHANDRA GUPTA: Sir, at the commencement of the discussion regarding transferability, a point has been raised by my friend to the right that we must not be forgetful of the rights of the

tiller of the soil. I will meet this argument by quoting the inimitable language of Babu Jitendralal Bannerjee which he used yesterday. He said this: "Under-raiyats must not be protected at the expense of the raiyats. At present the under-raiyat is absolutely without protection. We must see that in the excess of your generosity you do not cut at the root of the rights of the raiyats at the same time." Under-raiyats, as all members of this House konw very well, are the tillers of the soil; and when speaking about the tillers of the soil, the under-raiyats, Babu Jitendralal Bannerjee urged that one should not be excessive in his generosity and that he should not cut at the roots of the rights of the raiyats. Could we not expect for the sake of consistency that members of this House would extend the same principle when they considered the question of the raiyats in relation to the tenure-holders and the landlords? This is not all. I find I have got further support from my friend, Babu Jitendralal Bannerjee. Whilst speaking about bargadars he said that a bargadar cannot be treated as a tenant under the existing social and economic conditions of the country, and why should the Government try and attempt to give the bargadars some right. I again ask my friend, Babu Jitendralal Bannerjee—are not the bargadars the tillers of the soil? If then the tillers of the soil should be the only consideration that should guide us in framing the Tenancy Act legislation, I think we need not have been confined in this House for all these days and some more days to come. We could have just enunciated one principle that the tenancy legislation must be in favour of the tiller of the soil and others should not expect to have any of the rights which they enjoy under the present social or economic conditions, much less any rights which have been conferred upon them by any act of Government or statute, rightly or wrongly. I am not going to consider that question because my friend, Babu Naliniranjan Sarker, has explained before this House in very well-chosen words what the rights of the raiyats are and how they are correlated. Sir Provash Chunder Mitter has also explained the respective position. I am here ....(Hear, hear!) I am very glad that my friends to the right are appreciating me, though my friends have raised a false cry for looking after the interests of the tillers of the soil. (A VOICE: We were appreciating not you, but Sir Provash.) But when we scan through the speeches of some of these gentlemen we find they are really in this House for furthering the rights which my friends themselves may possess (A VOICE: Dictation is a virtue!) and value so much.

The next thing that I want to place before the House is this: We are here to try and harmonise the different interests of the various grades of people who have got interest in the land at the present moment. If we only look at some people and utter some shibboleth about the tillers of the soil in season and out of season we would not

be doing justice to all classes who are affected by this tenancy legislation. I can assure my friends to the right that we, in the Congress Party, consider the points that have got to be said in favour of the tenants, consider the points that have got to be said in favour of the tenure-holders, and land-holders, then consider what has got to be said in favour of the raiyats, under-raiyats and bargadars, and then after considering all these points we find what provisions will not take away the existing rights. We do question when someone proposes to take away the existing rights and ask them to point out what sanction have they got behind their demand to deprive people of their existing rights; we ask them to explain to us and convince us if there are any valid grounds behind their demand to have still more rights. Only yesterday the leader of the Congress Party was telling some members of our party when they urged that this is the demand of some people... .....

Babu JITENDRALAL BANNERJEE: I rise on a point of order and it is this. I want your ruling whether a member is to be permitted to refer to a private conversation for the purpose of fortifying his arguments in this House?

Mr. PRESIDENT: It is not desirable that reference should be made to private conversations, but I do not think that a passing remark is objectionable when it adds to the liveliness of the debate. (Laughter.)

Mr. JOGESH CHANDRA GUPTA: Sir, I was only referring to the telegrams we have received as in this House an honourable member showed me a telegram saying that that is the sanction behind the demand that is being made here, and I was quite within my rights to explain that telegrams like that are also considered by our party when we come to a decision whether to support or not any particular amendment; and I am quite within my rights—and there need not be any uneasiness in the mind of anybody who may feel uncomfortable at any principle that may be enunciated showing what guides the members of the Congress Party, which is recognised as the party which always try to do their duty here according to strict Congress principles and in the interests of the people of the country whom they represent. We do consider the different standpoints that are placed before us and then we decide about these matters. I do beseech the members of this House not to raise any theory which will not hold water in every case, but to proceed only on the principle of justice and fairness and what is right to all parties affected by this legislation.

Maulvi TAMIZUDDIN KHAN: Sir, I rise to support the amendment moved by my friend Maulvi Asimuddin Ahamad. I see, Sir, so

far as this amendment is really concerned, it can now be said without any fear of contradiction that the Bill is a landlords' Bill. It has been said that there is a custom at present that landlords are entitled to certain fees when transfers of occupancy holdings take place and therefore that custom should be solidified into law in the present legislation. There is no doubt that there is such a custom, but I ask, Sir, is there not also an opposite custom? What about the custom of the transferability of these rights where they exist. Does the amending Bill give any idea of upholding that custom which certainly must exist somewhere in the country, namely, that raiyats can transfer their occupancy rights even in spite of the opposition of the landlords? Therefore, as there is no reference to that custom whatsoever in this Bill, I consider that the attempt to give 25 per cent. of the sale money to the landlords is nothing but a measure to help the landlords and the landlords alone. Then, Sir, is it the duty of the Government to uphold any custom and every custom, and should not the Government go behind the custom and examine the justice of the custom? If it is the duty of the Government to uphold any and every custom, I think, Government has committed a grievous mistake in not incorporating the custom by which all landlords realise illegal amounts known to everybody, the custom by which landlords' moharars realise tohurirs from the tenants.

Babu JITENDRALAL BANNERJEE: These are supposed to be fair.

Maulvi TAMIZUDDIN KHAN: But the Government would perhaps say that they do not recognise that custom, because it is unjust and unfair. The Government will probably say that it is not necessary for the Government to go behind that custom of landlords taking a certain amount of money whenever their raiyats transfer their holdings. Sir, why should the landlords realise this money? I do not contend that the landlords have no proprietary rights in the land under the present law. The present law is that they have got such proprietary rights, although that law is not founded on justice. The landlord has the proprietary right and he gets a substantial salami from the tenant when the latter takes lease of his land. The tenant when he sells gets only the purchase money out of which he has to pay the landlord's premium. When the tenant takes a lease of land, he certainly acquires some right. Now, by this amending Bill the Government ought to have recognised that right of the tenant which he acquires by taking lease of the land from the landlord. But on the other hand the present Bill pre-supposes that he acquires no right whatsoever in the land and all the proprietary right which the landlord enjoyed remains with the landlord even after he leases out the land. That seems to be an absurd proposition.

If we consider the other points which have been advanced from the Government side, i.e., what the law was in 1793 and what the law is at present, I do not like to say anything, because that question has nothing but of an academic interest and I do not like to enter into questions of academic interest only. What I like to emphasise is that in justice the landlords cannot lay any claim whatsoever to any landlords' fees and that for this simple reason. We may just look at the absurdity of the whole situation. What is the right of the landlord? The landlord gets rent and has to pay a certain amount of revenue to Government. Take for instance the rent of a bigha of land, it may be Rs. 2. The landlord pays for that one bigha Re. 1 to Government and makes a profit of Re. 1. I assume this for the sake of argument. Now, if the landlord wants to sell his proprietary right, he does not get more than 20 times the annual value, i.e., Rs. 20. Now if the market value of a bigha of land is Rs. 200, when the raiyat sells, that land, what is the landlord going to get by this transaction? He is going to get $25 \times 2 =$ Rs. 50, whereas by selling his absolute interest he could not under any circumstances get more than Rs. 20. Can absurdity go any further? Why the landlord should go on enjoying this salami as long as he exists and as long as the raiyat goes on transferring his holding from one hand to another? The landlord will go on enjoying this salami for all time to come, on what grounds, it is very difficult to see for us on this side of the House.

Now, my friend Mr. Gupta, has argued that just as they have been able to kill the bargadars, just as they have been able to circumscribe the rightful privileges of the under-raiyats, why should they not make another attempt to curtail as much as they can the rights of the occupancy raiyats also? If we have to rely on arguments like that where are we to stop? I do not like to add anything.....

Mr. JOGESH CHANDRA GUPTA: Sir, on a point of information. That was not my argument.

Maulvi TAMIZUDDIN KHAN: I do not see any justice whatsoever in the landlords' getting any fees beyond what they are entitled to in respect of permanent tenures under sections 12, 13 and 15 of the present Act. With these words I beg to support the amendment of Maulvi Asimuddin Ahamad.

Babu SURENDRA NATH BISWAS: Sir, we have been hearing for the last few days a great deal from the mouths of the so-called friends of the tenants that the tillers of the soil should be the owners of the land. To me it seems to be the same thing as saying that the manufacturers of the Government currency notes are the owners of the notes, or that the manufacturers of the materials of this building are the owners of this building. If the latter propositions are absurd,

I will say that the former is equally absurd. An issue has been raised that the landlords are taking away the rights of the tenants. Let us see whether the landlords are taking away any rights from the tenants or the latter are taking away any rights from the former. Sir, I realise that this House is not taking away any rights from the tenants and giving away the same to the landlords, but on the other hand is taking away some rights of the landlords and giving them to the tenants. My reason for laying down this proposition is that by the Permanent Settlement the proprietary right in the land was vested in the zamindars.

4 p.m.

Then by the Act of 1885, an occupancy right was given to the raiyat and thereby some right was taken away from the zamindars and given to the tenants. The tenants were given the right to hold the land—to occupy the land—against the landlord under all circumstances. Even when the Government sells by auction the property of the zamindars for non-payment of revenue, the right of the occupancy raiyat is not extinguished. Again now by this Bill we are giving away some rights to the tenants at the expense of the zamindars. My reason is this. If the proposition is accepted that the proprietary right in the land is vested in the zamindars, you cannot deprive him of that. So long as there is the Permanent Settlement in force you must admit that the proprietary right is vested in the zamindars, and accordingly the right of transfer must remain with the zamindars. According to the present law, the proprietary right and the right of transfer being with the landlord alone, the landlord can take possession of the land on its transfer by the tenant. Sir, the principle is that the landlord gives out his land to the tenant for enjoyment only and not for transfer. Now, in the amending Bill it is proposed that the right of transfer should be given to the tenant. I should say that it is limiting the rights of the zamindars and not taking away the rights of the tenants, as has been said by some members. I therefore submit that there is good reason for arguing that the zamindar should have a share of the value of the land on transfer. Let both the parties share it: let the tenants take a portion and let the zamindars also have a share therein. What I say is a reasonable proposition. We must not be led by sentiment. It is very easy to say when the speaker is not affected that all the rights of the landlords be transferred to the tenants as some members are saying to-day, well, it is just like those people who say: "Goddess, give my brother a son, my uncle will give you a goat."

Sir, I again say that we must not be guided by sentiments, we must be reasonable. Government must protect all parties—tenants, zamindars, and middlemen. Everybody expects protection from the Government, whether it be the British Government or a national Government.

With these words, Sir, I submit that the amendment of Maulvi Asimuddin Ahamad is not only not reasonable but is also preposterous and I oppose it.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, in view of the very heavy list of amendments, may I suggest that if you are satisfied that the question has been fully discussed, it should now be put?

Mr. PRESIDENT: I think this matter has been discussed very thoroughly, : and I propose to put this amendment to vote now.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, there are many members who would like to speak.

Khan Sahib ABDUS SATTAR: Sir, I want to speak.

Mr. PRESIDENT: I have already decided that this question has been thoroughly discussed, and I cannot allow members to continue the debate. I will put the question now.

The motion of Maulvi Asimuddin Ahamad was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Bannerjee, Babu Jitandralal.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarkar, Rai Sahib Rebati Mahan.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Prometha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Forrester, Mr. J. Campbell.

Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Khan, Mr. Razaur Rahman.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Maharaja Jogindra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

The Ayes being 22 and the Noes 75, the motion was lost.

Mr. PRESIDENT: I propose to pass over amendments Nos. 264-269 for the present: I do not think that they can be discussed profitably at this stage. I shall now take up amendment No. 272.

The following motion was called but not moved: —

"**Babu SACHINDRA NARAYAN SANYAL** to move that in clause 23, in proposed section 26B, lines 1 and 2, the words 'or a share or a portion thereof' shall be omitted."

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 273 and 274.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I beg to move that in clause 23, in proposed section 26B, line 6, after the words "capable of being transferred" the words "and bequeathed" shall be inserted.

Sir, my point is very simple, and it is this. Section 26B as it stands now provides that—

"The holding of an occupancy raiyat or a share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property."

When we compare the language of this section with the language of section 11, we find that there is some change which should be rectified.

4-15 p.m.

Section 11 runs thus: "Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property." What I want, Sir, is that after the words "capable of being transferred" the words "and bequeathed" shall be inserted, and for this reason. So far as I have been able to look up this point, Sir, it seems to me that the term "transfer," at least the definition of it as given in the Transfer of Property Act, does not include "bequest." That being so, and the scheme of the Act being that occupancy holdings will be made transferable I think it right and proper to insert those words to make the position clear.

The Hon'ble Sir PROVASH CHUNDER MITTER: If the member will withdraw his amendment and if, Sir, you will permit me to put in a short-notice amendment, I am quite prepared to accept the amendment in this form. With your permission, Sir, I would propose this amendment in another form:—

"That in clause 23 in proposed section 26I—

(*1*) in sub-section (1) after the figures and letter '26F' the figures and letter '26H' shall be inserted, and

(*2*) in sub-section (2) for the words 'in the same sections' 'transfer' the following shall be substituted, namely:— 'in sections 26B, 26C, 26D, 26F, 26H and 26J "transfer" includes bequest but in sections 26C, 26D, 26F, 26H and 26J it.'"

Babu JOGINDRA CHANDRA CHAKRAVARTI: I accept the amendment of Sir Provash Chunder Mitter and withdraw my motion.

The motion of Babu Jogindra Chandra Chakravarti was then, by leave of the Council, withdrawn.

The following amendment was called but not moved:—

"**Maulvi KADER BAKSH** to move that in clause 23, in the proposed section 26B, line 6, after the words 'capable of being transferred" the words 'or bequeathed' shall be inserted."

Mr. PRESIDENT: The motion of Babu Jogindra Chandra Chakravarti has been amended by the Hon'ble Revenue Member in this way:—

"That in clause 23 in the proposed section 26I—

(*1*) in sub-section (*1*) after the figures and letter '26F' the figures and letter '26H' shall be inserted, and

(*2*) in sub-section (*2*) for the words 'in the same sections' 'transfer' the following shall be substituted, namely:— 'in sections 26B, 26C, 26D, 26F, 26H and 26J "transfer" includes bequest but in sections 26C, 26D, 26F, 26H and 26J it.'"

I have decided to admit it on short notice and I shall now put it.

The above motion was then put and agreed to.

Mr. PRESIDENT: I propose to take up items Nos. 275 and 278 together.

Mr. SYED MD. ATIQULLAH: Sir, I beg to move that in clause 23, in the proposed section 26B, in line 6, after the word "transferred" the words "between bona fide agriculturists only" shall be inserted.

In moving this amendment my intention is that the rights of transferability which are going to be conferred on the raiyats should be confined to bona fide agriculturists only, and it is for the protection of the interests of the raiyats themselves that I have proposed this amendment. Sir, those who are acquainted with the life of the peasants of our country will agree with me that they are illiterate and ignorant of their rights and duties and there is every possibility of these rights being abused under pressure. It may happen, Sir, that a raiyat is in need of money. He goes to the money-lender for money. Now, the money-lender knows that the raiyats have been given the right of transferring their holdings and instead of advancing any money as loan by mortgage or otherwise, will demand that they transfer their holdings to him and these raiyats being illiterate men run the risk of transferring their holdings to these money-lenders. In the Punjab, Sir, the right of transferability was made free and unrestricted, but afterwards a special law—the Punjab Land Alienation Act—had to be enacted for the protection of the interests of the raiyats. And why? Because on account of debt they used to transfer their holdings to the money-lenders and the land almost practically passed into the hands of money-lenders and mahajans. If this right is not restricted between bona fide agriculturists only, here also the land may pass into the hands of money-lenders, much to the detriment of the poor raiyats.

Maulvi ABUL KASEM: Sir, I rise to support the motion of my friend and would also have supported the other amendment if it were moved. In support of the motion I have only to say that the Council should think and I hope they think that agriculture should flourish in the country and they take interest not in the protection of the rights of this class of people or that. We are interested in our national wealth, in the productive powers of the land and in the well-being of the tillers of the soil of whom we have heard so much in this House. If we are really going to benefit the tillers of the soil, to protect their interests or advance their interests, I think the House should whole-heartedly support the motion of my friend. A reference has been made to the Punjab Land Alienation Act and it will be said on the other side—I hope not on the Government side—that there was a good deal of public opposition against it and public opinion here would not tolerate this restriction on their inherent right which enables people to sell their rights to whomsoever they like. And when this Alienation Bill was on the legislative anvil in the Punjab it was passed, if I may say so, in the teeth of an influential and educated opposition, and those who have observed the result will find that agriculture has flourished there to a very large extent, and the national wealth and the produce of the province have increased enormously since the passing of that Act.

Sir, we are here to discuss the relative rights and privileges of raiyats and tenants as against the zamindars. But I want to remind the House that a third class of people does exist and will come in larger numbers and that is the capitalist. We have to protect the cultivators, the actual tillers of the soil, not only against the zamindars of whose oppression any tyranny we have heard so much but also against the intrigues, manoeuvers and tractics of money-lenders; and in the word "money-lenders" I include those who invest money for the purchase of agricultural lands. In these days our businessmen—I mean to say small businessmen—and our professional men do not like to and cannot invest their savings in the purchase of zamindaris. In the first place, they have not got sufficient capital for it, and, secondly, this capital will not bring a satisfactory return and therefore they prefer to invest their money in purchasing occupancy holdings. Now that the process of transfer of occupancy rights is going to be simplified and purchasers can safely put their money in land, they will prefer to come in larger numbers and I am afraid agriculturists will suffer. I would rather prefer the actual agriculturists remained under the zamindars than that they would be a tenant or a serf or a hireling of any money-lender. Zamindars are after all men who feel more concern for the tenantry than money-lenders. If Government intends to protect the agriculturists and if they have the interests of agriculturists at heart and if they wish an increase in the general productive power

of the land and also the welfare of the agriculturists on whom depends the prosperity of the province, then I hope they will support this amendment. I also hope this matter will be considered without prejudice. It may be said, and it will be said in this House, that it restricts the right of a raiyat about his choice of a purchaser and that he will not get sufficient value for his land, that is, he will get less than if he had sold to another man. It is quite true, but we are here not to look to the interest of particular individuals who have acquired occupancy rights or for another class of people, but we are here to look to the general prosperity of the province as a whole and that prosperity demands that agricultural land should be in the hands of the agriculturists with as few of middlemen between them as possible. I have a complaint to make in this House, Sir, that a large number of people live simply on an acre of land--zamindars, patnidars and non-patnidars. In my district of Burdwan there is also another class known as the fifth class and we should not allow the money-lender to come in after the fifth man. Zamindars would be rather better men than these people.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I appreciate the intention of the mover in bringing forward this amendment but I am afraid it will be difficult, rather it will be impossible, to give effect to his intention. What he intends by this amendment is that the transaction of transfer should be only between bona fide cultivators, but the word "bona fide" cultivator is incapable of proper definition. Who are the bona fide cultivators? In one place in a previous amendment Mr. Atiqullah proposed a definition of bona fide cultivator saying that he is the tiller of the soil. I ask him will not a man be a bona fide cultivator if he ploughs the land? His real intention seems to be to exclude the money-lender. Supposing a money-lender is a substantial raiyat and is really a bona fide cultivator but by proper economy and thrift he has saved money and has become a money-lender also. Will he be excluded from the category of a tenant? Even a big landlord can become an actual bona fide cultivator of the soil by starting agricultural farm. Will he be precluded from buying occupancy holding an account of the introduction of this definition in the Act. In these days everybody who thinks of the welfare of the young men and of the unemployment question of young men advocate that instead of hankering after service, they should go back to the land and become actual cultivators. Are they to be precluded from becoming owners of the land they cultivate? So long as they have not acquired lands and cultivate them they will be precluded from becoming actual cultivators under this amendment of Mr. Atiquallah.

Then of course there is the main objection that any sort of classification in the Act will restrict the option of the raiyat to find a purchaser. In other words it would narrow the field of purchasers, which

would have the effect of lowering the prices. Our interest is to look after the man who sells and not the man who buys. We want the largest amount of money for him from the smallest portion of a holding. For these reasons I oppose the amendment and I hope Mr. Atiqullah will withdraw it.

The motion of Mr. Syed Md. Atiqullah was then put and lost.

[At 4-35 p.m. the Council was adjourned and it reassembled at 4-45 p.m.]

The following amendments were called but not moved:—

Babu SACHINDRA NARAYAN SANYAL to move that in clause 23, in the proposed section 26B, lines 7 and 8, after the words " to the same extent as other immovable property," the following shall be added, namely:—

" in cases of such transfer the right of pre-emption should be given to the landlord."

Babu NAGENDRA NARAYAN RAY to move that in clause 23, after the proposed section 26B, the following shall be added, namely:—

" but in all sales bona fide agriculturists having lands in contiguity shall have next prior right for purchase after the claim of the under-raiyat is satisfied."

Mr. PRESIDENT: I think item No. 279 should be postponed as it depends on No. 285. I propose to take Nos. 280 and 281 together.

The following amendments were not moved:—

Srijut TARAK NATH MUKERJEA to move that in clause 23, at the end of proposed section 26B, the following be added:—

" *Explanation.*—In this section 'transferred' does not mean leased in contravention of the provision of section 85."

If the above amendment be not carried, **Srijut TARAK NATH MUKERJEA** to move that in clause 23, at the end of proposed section 26B, the following be added:—

" *Explanation.*—In this section 'transferred' does not mean 'exchanged.' "

Mr. PRESIDENT: I propose to take items Nos. 283 and 285 together.

The following amendments were called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that in clause 23, to the proposed section 26B, the following proviso be added, namely:—

"provided that a share or portion of a holding shall not be capable of being transferred by exchange in the same manner as other immovable property."

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 23, to the proposed section 26B, the following provisos shall be added, namely:—

"(1) Provided that no transfer shall be valid and operative if it is made in favour of a capitalist or a company investing money and seeking to earn dividend or profit by carrying on cultivation on an extensive scale through hired or imported labour;

(2) Provided also that a single individual or his joint family members shall not be able to purchase more than 50 acres of land in one or more documents. Such transfers exceeding the statutory limit of 50 acres will be invalid or inoperative."

Babu AKHIL CHANDRA DATTA to move that in clause 23, after the proposed section 26B, the following shall be added, namely:—

"Provided that the transferee shall not acquire any right in the holding unless—

(*a*) he has acquired it for the purposes of cultivating it by himself, or by members of his family or with the aid of partners or by servants or labourers residing within the district in which the holding is situated or an adjoining district or by sub-letting the land to actual cultivators; and

(*b*) he is bona fide resident of the districts within which the holding is situated or an adjoining district:

Provided also that no transferee shall acquire by any transfer effected after the passing of this Act occupancy right in land exceeding 100 bighas.

Explanation.—A transferee for the purpose of this proviso shall mean and include himself and all the members of an undivided family to which he belongs."

Khan Bahadur Maulvi EKRAMUL HUQ: I beg to move that in clause 23, to the proposed section 26B, the following shall be added, namely:—

"Provided that all transfers effected by a registered instrument or otherwise before the passing of the Bengal Tenancy Amendment Act in which (A) the tenant has not been recognised by the landlord or (B) over which, a suit for ejectment is pending before court of law, shall be so recognised in case (A) by the transferee satisfying the necessary provisions of this Act regarding transfer, in case (B) by his paying in addition the legal cost incurred by the landlord in conducting the suit, in case the holding was not transferable by custom."

In this amendment I have tried to bring it to the notice of the House that in cases of transfers over which suits are pending in courts of law, legal recognition should be given to such transfers or in other words retrospective effect should be given to the law now before us. I leave it to the Hon'ble Member in charge and the House to decide whether they are going to accept this proposal of mine. I think that if the amendment is accepted it will provide for the curtailment of litigation over all matters of transfer and will give relief to the tenantry at large.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I oppose this motion. What the hon'ble member wants is to give a sort of partial retrospective effect to the provisions of this section of the Bill. He wants those transactions which have already taken place and those which are still pending before courts should also be governed by the present section of the Bill which in the ordinary course will not come into force till the Bill is passed into law. For this obvious reason I oppose the motion.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I support the principle which is involved in this amendment, namely, that a time should be allowed to give effect to the provisions of this Act, with regard to the payment of salami and so on in cases where transactions took place before the passing of the Act. I was waiting to know what Mr. Mumin had got to say against this principle. I do not see any reason why it should not be considered desirable, when the object of the present legislation is to give the right of transfer to occupancy raiyats, to recognise the practice which is going on in the country for a considerable number of years and which has grown up into a custom, namely, the right of transfer of occupancy holding. The

whole object underlying this amendment seems to me that in those cases where there are disputes going on between the transferee and the landlord regarding the rate of salami and so on and in those cases again where there are suits going on for ejectment.

Let us recognise the principle which has been recognised as a sound principle of recognition in cases of transfer which took place before the passing of the Act and for the settlement of the disputes in the court of law. So far as the principle involved in this matter is concerned, it appears to me that the drafting is defective, and that it requires considerable change and, if the drafting is changed, I am prepared to accept this principle and we on this side of the House are also agreeable to it.

The Hon'ble Sir PROVASH CHUNDER MITTER: About this amendment will you kindly agree to postpone it to-day as there is one question of principle involved in it as to whether some retrospective effect should be given or not. In the draft no date is mentioned and there are various defects in the draft. If you will take it up not before to-morrow it may be possible for us to come to an agreement because we cannot possibly accept the draft as it stands.

Mr. PRESIDENT: Am I to understand that you accept the principle of the amendment?

The Hon'ble PROVASH CHUNDER MITTER: Not all the principles but one principle we may accept. The draft being what it is we are bound to oppose the amendment but if you give us time it would be better.

Mr. PRESIDENT: This could be arranged. In that case, the best thing for you is to say to what extent you accept the principle underlying the amendment and if the mover of the amendment is thereby satisfied the drafting could be left to the Legislative Department. I do not know if the mover of the amendment is at all willing to have his amendment amended.

The Hon'ble Sir PROVASH CHUNDER MITTER: I shall clearly explain my position. As we discuss the amendment as it stands here we decided to oppose it but so far I am concerned and so far as some of my advisers are concerned all of us had not been able to sit together. We may be prepared to accept this principle that a date should be fixed from which these provisions will have effect. Beyond that we won't be able to accept anything but if the mover so chooses he may either withdraw it or he may ask for time just as I am asking for time.

Khan Bahadur Maulvi EKRAMUL HUQ: I would propose that my amendment be drafted in the Legislative Department and that Government proposal be also drafted. We can then find out whether we can come to a settlement.

Mr. PRESIDENT: It is clear that Khan Bahadur Ekramul Huq has no objection to this matter being put off. I therefore postpone the consideration of this matter.

It may tell the House that amendments Nos. 286 and 287 have not been sanctioned by the Government of India.

Khan Bahadur Maulvi EKRAMUL HUQ: I beg to move that in clause 23 the proposed section 26C shall be omitted.

My submission before the House is this: that by inserting this section Government has given much greater power to the landlords than they had before. This being a new thing it is necessary for the whole House to consider the effect of this section and the other sections that follow and which to my mind very heavily affect the interest of the masses in the country. The procedure that was adopted before was this: that when transfers were made and in cases where the landlord was in a position to eject the transferee on the ground that he had not stated the exact price he had to take recourse to the law court and generally even in cases where the tenants had no right to transfer, before the law courts such cases used to terminate on amicable settlements. In many cases the tenants were paying much less than what are provided for by this Bill. Now tenants will be made to pay definite sums even on part transfers which they were not at all paying previously, and they are called upon to pay even transmission fee, etc. . . . .

5 p.m.

A new provision like this is bound to adversely affect the tenantry and it will ever keep open the flood gate of abuses inasmuch as it will enable the landlord—the greedy landlord and the ever greedy gomostha—to make terms with the transferees and to compel them to pay a much more heavy sum than what has been stipulated for in this Bill. It is unfortunate that Government, whose duty it is to protect the masses in the country, should have been a party to the framing of such a Bill which is evidently against the interests of the tenantry. On this subject, Sir, we had the privilege of hearing in this very House a learned legal discussion by a great lawyer. I wished he had discussed the matter, not as a lawyer, but as a Member of Government entrusted with the sacred duties of protecting the masses in the country. It was he who told us that it was no use discussing whether the actual proprietors of the land were the tillers of the soil or the landlords. But one thing he failed to bring to the

notice of the House and it was this: that it was expressly stipulated in the contract when rights were given to zamindars in 1793 that it was the duty of the zamindars to protect the tenants and to do everything for their welfare and happiness. May I ask, and ask in all seriousness, how far the zamindars have acted upon that solemn pledge, namely, to protect the tenantry, since the Permanent Settlement came into force? May I also ask Government whether they have ever thought fit to enquire how far the zamindars in relation to their tenants have fulfilled that solemn pledge? The fact is that neither the Government nor the zamindars have honoured the solemn pledge so far as the poor tenants are concerned. Some efforts were made to give some sort of relief to the tenantry but the remedy applied was worse than the disease and to-day, after the earnest efforts made by some of the members in this Council, the Government have brought this Bill before the House. But what do we find now? We find that instead of siding with the masses in the country, Government are siding with the spoliators of the land instead of helping they have provided for their harassment. We have heard in season and out of season from members of Government holding highest offices in the land both here and in England that they are the friends of the masses but actually they have played the part of the enemy.

You have provided that the tenants should be compelled to pay 25 per cent. salami. Mr. Sachse was pleased to admit that though 25 per cent. was the salami in Eastern Bengal, it was never so in Western Bengal and that now not only East Bengal but West Bengal should have to pay 25 per cent. as salami. I ask: Is this fair, is this just, is this right, is this reasonable? Does it not show that you are not following the path of the righteous which you should. If you still persist that the salami should be 25 per cent. for all the different districts in Bengal, you will be perpetrating a wrong for which there is no justification whatsoever. Not only that you are not at all justified under any circumstances to make tenants pay 25 per cent. as salami on all transfer. Is it not a fact that on part-transfers not a single pice is under the law paid to the landlords and is it not a fact also that for one case of full transfer there are at least 20 cases of part-transfers? Are you doing justice: are you protecting the masses or the landlords when you make part-purchasers also to pay salami of 25 per cent.? My friends over there (Swarajists) have become of one mind with the landlords and Government.

Khan Bahadur MUHAMMAD ABDUL MUMIN: On a point of order, Sir. We have not found that my friend, Mr. Huq, has spoken a single word on this particular amendment. He has been repeating the same general arguments on landlord's fee of which he had opportunities before. He is quite beside the point.

Khan Bahadur Maulvi EKRAMUL HUQ: The question of registration is so intimately connected with this question that we cannot discuss this matter without referring to that.

Mr. PRESIDENT: What have you got to say about clause 23?

Khan Bahadur Maulvi EKRAMUL HUQ: My submission is this: that on these grounds and on the findings of the Rent Commission, it is your duty as Members of Government to delete such a provision as you have made in the amending Bill, and if you delete this clause, then certainly the other clauses which follow will become infructuous and useless, and that being so, the tenantry shall not be called upon to pay heavily as you have stipulated. (A VOICE: He is taking inspirations from his friends.) Sir, I take my inspiration from my own humble self and from my constituency, but my swarajist friends get their inspirations from the zamindars. As I have said, Sir, Government should not be a party to robbing the tenantry of the morsel of their food. I appeal to Government to take courage—I appeal to the Hon'ble Member in charge to consult all his subordinate officials as to how he could protect the tenantry from the enactment of such a high-handed measure which is sure to ruin tenantry. I do hope, Sir, that the Hon'ble Member will consult his conscience too and declare that under all the circumstances of the case the zamindars cannot and should not get a single pice more than what they are getting at present. With these few words, I commend my amendment for the acceptance of the House.

Mr. BIJOY PRASAD SINGH ROY: The members of the Government side including Sir Provash Chunder Mitter and Khan Bahadur Abdul Mumin and the landlord members of this House, including the Maharaja of Natore, my esteemed friend, have made it fully clear that this Bill is a compromise and that the zamindars do not desire to stand in the way of the tenants. In fact the zamindars have agreed and they have decided to give them all reasonable concessions. But that will not satisfy my friend, Khan Bahadur Ekramul Huq. He is of opinion that the contract which the Government made with the tenants at the time of the Permanent Settlement has not been fulfilled. If there was any such contract, I think Government also contracted with the zamindars. They invested their money in lands and they are entitled to get a full return of their investment. It is a well-known fact that the profit which the zamindars derive from their zamindaries to-day is not even 4 per cent. My friend, Khan Bahadur Ekramul Huq, is anxious to reduce it further. He talked of the solemn pledge which the Government gave to the tenants of protecting their interests.

What is the Bengal Tenancy Act? It is certainly more than fulfilment of that pledge of the Government. By enacting the Bengal Tenancy Act, the Government have slowly and imperceptibly and I should say unjustly encroached on the rights of the zamindars. Anyone who has cared to study the proceedings of the meetings of the Imperial Legislative Council in 1885 when the Bengal Tenancy Act was on its anvil would have no difficulty in realising that the zamindars were against granting the right of transfer to the tenants on the ground, on which one of the champions of the tenants' cause, namely, Maulvi Abul Kasem had just supported the amendment of Mr. Atiqullah, viz., that the lands would pass into the hands of undesirable persons like merchants and money-lenders. But the same zamindars have now realised that the time has come when they must agree to grant certain concessions, whatever might be their effect. They are now prepared to grant the right of transferability provided their own interests are properly protected. I appeal to the European members of this House who seem to have the whip hand to consider this question very seriously that, however great their sympathy may be towards the tiller of the soil, they cannot be forgetful of the pledge which the Government gave to the zamindars. By a mere stroke of the pen, the regulation of 1793 cannot be brushed aside on any pretext whatsoever. Khan Bahadur Ekramul Huq has said that the Government should not be a party to robbing the tenants of the morsel of their food. I repeat the same that Government should not be a party to depriving the zamindars of their just rights, namely, their right to salami and other dues.

Mr. SARAT C. BASU: On the face of it the amendment seems to be a prejudicial one, but if we look into the matter very deeply, we shall be able to find out that nothing is so disastrous to the raiyats as the provision that is going to be made.

5-15 p.m.

Now, when the Permanent Settlement was made in 1793, the Government and the people knew that there were the zamindars and the actual cultivators of the soil. There were only two classes of the latter, namely khudkhash and paikhash. There were no such things as occupancy rights or occupancy raiyats. It was considered desirable that all these khudkhash and paikhash raiyats and their descendants should never be turned out of their lands. When the Permanent Settlement was made the transferability of occupancy rights was altogether unknown. (A VOICE: Question.) If you look at the Regulation, you will find that there were two classes of tenants, viz., those that were considered by the Regulation to have an interest in the soil and those who had no interest in the soil. The raiyats were considered to belong to the second class. I should explain by saying that although they were not considered as having any interest in the soil,

it was meant that they would hold their land, or they would cling to their land as long as they paid the rent, and on failure of payment of rent their right to hold the land would be extinguished. It was not permissible to transfer holdings. All khudkhash as well as paikhash raiyats belonged to the latter class who were denominated in the Regulations as mere lease-holders, that is to say they had connection with the land as long as they paid the rent and not after that. Now, what will the effect of the amendment be on the tenure-holders, if free transfers be allowed. Speaking of Western Bengal, we all know there were large numbers of grihasta families who were tenure-holders in the early days. But when luxury increased, when people's wants increase there will be motives for transferring their holdings. As occupancy rights were not transferable so long, the old grihasta families had stuck to their lands or rather, I should say, the lands had stuck to them and they have not been able to transfer. Increase of necessity, increase of need made these families impoverished and what remained of them are their homesteads and very little of those lands which were given to them from the time of their ancestors. If, however, the right of transfer be allowed without any let or hindrance, as soon as occasion arises for the next daughter's marriage in a grihasta family or at the next Puja time, all these ancestral lands will pass away from their hands and go to the banias who want to speculate with their money by investment on land. The result would be disastrous especially to the grihasta community of Western Bengal, if the right of free transfer be given.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I rise on a point of order. We are not discussing the question whether there should be transfer or not, but whether this clause should be deleted or not.

Mr. PRESIDENT: Don't be so very jealous of the little latitude I have given to Mr. Basu. I hope he is now coming to the point under discussion.

Mr. SARAT C. BASU: The provisions that have been made in the Bill are very salutary—salutary both to the raiyats as well as to the landlords, and therefore they should be allowed to stand; and the present motion for omitting those conditions I was going to submit to the House would be disastrous to the raiyats, as their lands will pass away freely from their hands. Therefore in the interests of the grihasta community who form the greater bulk of the people in Western Bengal, the salutary provisions as drafted in the original section should remain. This amendment which speaks of deleting them should not be enacted by any means. I am therefore objecting to the amendment entirely from the raiyats' point of view and in their interest the Bill as originally drafted should be retained.

Khan Bahadur Maulvi AZIZUL HAQUE: I would support the deletion of this clause mainly on the ground that we are advocates of the principle that there should be free transferability of the occupancy rights and because clause (*c*) of section 26C provides that a fee should be paid in case of transfer we support the deletion. I hope I shall be within my jurisdiction if I discuss the question as to why there should be free transfer of occupancy rights.

Mr. JOGESH CHANDRA GUPTA: May I rise, Sir, on a point of order? We are not discussing the deletion of clause (*c*) of 26C but the deletion of the whole of section 26C.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, if my friend will apply the simple rule of Arithmetic, he will see that the deduction of the whole thing means the deduction of the part, i.e., the deletion of the whole section means the deletion of the various clauses and sub-clauses that may be under that section. For the time being, my attention is directed only to sub-clause (*c*) of section 26C (*2*), in which it is provided that a fee should be paid on every occasion of transfer. If I oppose it, I do so on the ground that this is the first time that a doctrine has been started in this country that on every occasion of transfer every tenant has to make a present of a certain amount of money as fee to the zamindar. Never before could I find anything either in recorded deeds or speeches or proceedings of any Committee or Council, that the landlords of Bengal are to be paid a certain sum of money on any occasion of transfer. As I have said before in connection with the last amendment, all that the landlords can claim is a notice and a fee for commutation purposes; but the doctrine that every occasion of transfer will mean a little sum of money to be paid to the landlord is a doctrine to which we do not subscribe. I do not know whether the Government members have changed their views, I am tempted to quote an expression of opinion of Mr. Dash, who is now one of the Government members. While he was District Judge of Faridpur, he said that so far as the transferability of occupancy rights is concerned, there is no reason why the landlord should have any right to claim a salami, and that the law should not recognise any claim to have it as a source of income. That is the position, Sir, we take up to-day. I respectfully submit to the members of Council that we are making a departure to-day when we ask that on every occasion of transfer, the tenant shall have to pay a certain amount of money, and that, as I said the other day, the amount will be about 25 per cent. of the purchase value. My hon'ble and gallant friend, Lt. Singh Roy, was so charitable as to be generous on this occasion. He could afford to be generous as long as his generosity brought him 25 per cent. in the bargain. I may remind my friends that this question of transferability was taken up in the politics of this country from

the early Seventies and Eighties of the last century. It was the decided view of the Government of Bengal, which unfortunately is not the same to-day, that there was a free right of transfer so far as occupancy raiyats were concerned. The Government of Bengal wrote to the Government of India in the year 1882, definitely laying down that the evidence submitted before them was conclusive on the point that as a general rule occupancy rights were then saleable in Bengal without any interference on the part of zamindars. Sir, that was in the year 1882. As I have said before, the Rent Commission of 1879, which investigated the problem connected with tenancy legislation in this country from various points of view, took the evidence of persons who could say anything in the matter and was aided by the assistance of the representatives of the British Indian Association, which is the premier landlords' association in Bengal, came to the conclusion that so far occupancy rights were concerned, they were freely transferable in Bengal. Sir, the predecessor of the Hon'ble Revenue Member, who took charge of the Tenancy Bill—I mean Sir Courtney Ilbert—when introducing the Bill in 1884, said in no equivocal terms that so far as Bengal was concerned, occupancy rights were freely transferable. In the Statement of Objects attached to the Bill, it was stated that so far as Bengal was concerned, those most concerned regarded the quality of transferability as an important incident of occupancy rights. These are pronouncements, Sir, which, I think, the Revenue Member has forgotten to-day. I do not question their wisdom, their sincerity of purpose, but I do think that in this matter the tenant or anyone representing the tenant has just cause to be grieved at. I would again remind the House that the British Indian Association in the year 1884 practically accepted the proposal of free transfer of occupancy rights. But unfortunately, the tenants had no representatives of their own in the Legislative Council, they had no representatives of their own in the Select Committee, except the late lamented Right Honourable Syed Ameer Ali, and I can tell you how he foresaw the entire state of things which has come over us as a result of the discussion... .....(A VOICE: What was his proposition?) I hope my friend will allow me to have my say, and by the time I conclude I hope I shall be able to satisfy him if reason has any influence on him, if facts have any weight with him—that what I am stating is a fact. The late Right Hon'ble Syed Ameer Ali deprecated that there should have been any discussion at all regarding the transfer of occupancy rights; and he said so in these words—words which might be taken note of by anybody who has got the concern of the tenantry of Bengal. He said:

[5-30 p.m.]

"The free transfer of occupancy-holdings was, if I may so call it, the keystone of the measure. The custom had grown up in various

parts in Bengal and was gradually extending itself to the entire province. Excepting those places where the presence of a foreign element predominated and caused some degree of friction between landlords and raiyats, the tenants who enjoyed the right of free transfer were admittedly more prosperous and better able to withstand the periodical shocks of scarcities and famines. It was admitted that during the years immediately preceding the introduction of the measure in Council, the evidence in favour of the extension of the right of transferability had accumulated considerably. It was accordingly proposed to give a statutory sanction to that right. With reference to Bihar, however, a doubt was entertained by the Government of Bengal, and my own knowledge of the circumstances of that province induced me last session to bring forward a proposal to withdraw Bihar from the operation of the provision. That proposal, however, was not approved of, and it was resolved to give the right to all occupancy-raiyats throughout Bengal and Bihar. During the present session, the provision has been dropped entirely from the Bill. Whilst agreeing to the advisability of leaving to custom the right of free transfer in Bihar, I consider that as regards Bengal it would have a mischieveous tendency. In every place, even where the right has been freely exercised, such as the Presidency, Rajshahi, Dacca, and Chittagong Divisions, the customs will be disputed, with the results that a large portion of the consideration money will pass either into the hands of the landlord or their servants. It would have been far better to recognize transferability throughout Bengal proper, subject, if necessary, to the payment by the raiyat of a graduated scale of fees upon the consideration money, than to have left it to custom, which I fear will henceforth be disputed at every instance, to the serious prejudice of the tenant in the exercise of his right. With the safeguards which the Bengal Government proposed to attach to the recognition of the right in Bengal proper, no injury to the landholding interests need have been feared..... ..."

Mr. PRESIDENT: Khan Bahadur, is that going to be a very long quotation?

Khan Bahadur Maulvi AZIZUL HAQUE: No, Sir, I have got only one or two sentences more.

Sir, these are the words on which I want to lay emphasis—

"I think the mode in which the question has been discussed and decided is likely to produce mischief. Had the question not been raised, this mischief might have been avoided."

Sir, the facts are exactly what the Right Hon'ble Syed Ameer Ali foresaw. If the question had not been discussed at all, it would not

have been possible for the landlords to take advantage of the law. But because the question was discussed, the situation that has arisen is that the tenants in Bengal are in a very unfortunate plight.

Sir, it has been proposed that this right of transferability should be accompanied by a certain amount of salami. I would ask the Hon'ble the Revenue Member to inform the House how many thousands of transfer of occupancy rights have taken place in Bengal. What is the evidence before the Government of Bengal so far as transferability is concerned? I am quoting from the Survey and Settlement Report for the district of Bankura for the year 1920-21. It says: "The right of transfer of occupancy holdings, in whole or in part, is not seriously contested by landlords in Bankura." Sir, what is the reason for which you want to add 25 per cent. of the purchase money to the liabilities of the tenants of Bankura? Then, Sir, it is the opinion of Mr. Hart, who is now the Collector of Bankura, that so far as the district of Burdwan is concerned salami ought not to be paid. It was also the opinion of the District Magistrate of Murshidabad, whom, I believe, Government will not accuse of misrepresenting facts, that there should be free transfer of occupancy rights without salami. It was, as I said before, the opinion of Mr. Dash, the District Judge of Faridpur, that the landlord had no such right to collect salami and that the law should not recognise such a claim. In the opinion of the the Government Pleader of Midnapore the sales of entire occupancy holdings were recognised by the landlord and that no salami was paid for transfer of parts of occupancy holdings. In the opinion of Mr. Veitch, District Judge of Bankura, occupancy rights should be transferable. The same was also the opinion of the District Judge of Pabna and Bogra. What is the present law? If a tenant transfers 15 annas and 19 gandas of his holding, the landlord cannot do anything. For this reason, Sir, I support the deletion of the clause. While doing so, I wish to add one word. The proposition that the land belongs to the zamindars is entirely erroneous and we will not accept this proposition till substantial evidence is brought before the House.

Babu NALINIRANJAN SARKER: Sir, Khan Bahadur Azizul Haque has laid special stress on the opinion of the late Right Hon'ble Syed Ameer Ali about the free transfer of holdings given in 1885. I would place before the House the exact wording of his proposal. The Right Hon'ble Syed Ameer Ali moved an amendment that "occupancy raiyat should be entitled in Bengal proper to transfer his holding in the same manner and to the same extent as other immovable property, provided that the landlord shall be entitled to a fee of 10 per cent. on the purchase money."

Khan Bahadur Maulvi AZIZUL HAQUE: Will you accept that?

Babu NALINIRANJAN SARKER: It is no question of acceptance or non-acceptance.

Mr. PRESIDENT: Mr. Sarker, it will be very difficult for me to follow the debate if you pick up stray remarks of other members and try to argue matters with them.

Babu NALINIRANJAN SARKER: Sir, the Khan Bahadur has laid special stress on free transfer. I do not think that he has quite understood the meaning of the expression. Free transfer does not mean transfer without the consent of the landlord or without the payment of any fees to him.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I spoke about graduated scale of fees.

Mr. PRESIDENT: Mr. Sarker, you need not reply to these remarks. You might continue your speech.

Babu NALINIRANJAN SARKER: Sir, I do not want to speak further.

Babu AMARENDRANATH GHOSH spoke in Bengali, the English translation of which is as follows:—

"Mr President, I cannot support the amendment moved by the Khan Bahadur. I could not even understand why the mover brought this amendment at all. Section 26C, which the mover proposes to omit, deals with the registration of all transfers. The previous two sections 26A and 26B say that occupancy holding is transferable. If transfers are not registered how are we to give effect to these two sections? If the mover had proposed to omit these two sections as well we might consider if occupancy holding should be transferred at all. So long the sections which deal with landlord's fee and the right of transfer remain, the section 26C cannot be omitted for no reasons. A child cannot escape going to school by doing away with the teacher, so long his father lives. The mover ought to have given us some constructive proposal while destroying the existing section of 26C. As he has not done that, we should not accept his amendment."

Mr. A. C. BANERJEE: Mr. President, Sir, I should like to address the House with a view to pointing out certain misleading statements which have been made by some members, so that the

members may not run away with the impression which was sought to be created. First of all, it was said by the mover of the amendment that in East Bengal the salami is usually 25 per cent. but that in West Bengal it is not so. . . .

Mr. W. H. NELSON: On a point of order, Sir. This is entirely irrelevant.

Mr. PRESIDENT: Mr. Nelson, I do not quite agree with you. The mover of the amendment has said certain things about salami in West Bengal, I think I should allow a member to challenge the statement of the mover and say what he himself thinks to be the real state of affairs in West Bengal.

Mr. A. C. BANERJEE: In West Bengal there may be one or two districts where the salami may not be 25 per cent. but in the majority of districts the salami is 25 per cent. (A VOICE: In some districts nothing at all is paid). I would ask the gentleman who made that statement to prove that it is not so. I ask him to prove it affirmatively and not negatively. My friend is a lawyer and he knows what it means more than anybody else.

Then my friend, Khan Bahadur Azizul Haque, has quoted the opinion of the late Right Hon'ble Syed Ameer Ali and has told us that he was in favour of free transfer of occupancy right. That is not a fact: that is a misleading statement, I should say. The Right Hon'ble Syed Ameer Ali, as pointed out by my friend, Babu Naliniranjan Sarker, was in favour of transfer of occupancy right on a 10 per cent. salami basis, and 10 per cent. in those days carried us much further than 25 per cent. nowadays, as Rs. 10 in those days carried us much further than Rs. 25 now. In that view of the case, I submit that we are simply supporting Mr. Ameer Ali by saying that the salami should be 25 per cent.

Babu AMULYA CHANDRA DATTA: Sir, it seems that some of the speeches which have been delivered in connection with the amendment moved by Khan Bahadur Ekramul Huq are not quite relevant. Some of the speakers have raised the question whether occupancy right should be made freely transferable or not. I submit that that question does not arise in connection with the amendment which has been proposed. Some of the speakers have pointed out that in olden days the right of occupancy was not transferable. I should like to join issue with them. Sir, if time had permitted I could have shown that even in the days of Hindu rule the right of occupancy was transferable, subject to one condition, viz., that the right of pre-emption was given in favour of the agriculturists. It was only subject to that right that a raiyati holding was transferable.

5-45 p.m.

We have now got simply to deal with the question as to what should be the procedure if the right of transfer of occupancy rights is conferred on the raiyats. We have already, by enacting section 26B made the right of occupancy transferable. Now we have got to determine the question as to what should be the procedure which should be adopted. The mover proposes the omission of section 26C, but has not suggested any other procedure by which an occupancy right should be transferred. Let us see what section 26C says. It says "Every transfer shall be made by registered instrument, etc." Does the mover of the amendment want that rights of occupancy, which have been already made transferable, should not require any registered instrument? Of course, he has not suggested any other course which should be adopted. I cannot understand how he could seriously move an amendment like this. If he could have suggested any other procedure there would have been some justification for his amendment.

Now, Sir, when a transfer whether of a permanent tenure or of a holding at a fixed rate of rent takes place, a fee has got to be paid to the landlord and we are at present concerned with what the amount of fee is to be in the case of transfer of occupancy holdings. If the fee is omitted altogether, then it is a different thing but if it has still got to be paid, what is the machinery to be provided for the receipt of the salami and transmission to the proper quarter. I cannot think of a simpler machinery than the one contemplated, by section 26C. I submit, Sir, that the proposal contained therein is a very reasonable one. We who work in the mufassal civil courts know that many disputes arise with regard to the payment of the salami. Whenever that amount has got to be paid to the Gomastha or the amlas, etc., of the zamindars, large amounts have to be paid besides the salami as amla costs, etc. In order to stop exactions like these, it is necessary that some simple machinery as provided in this section should remain. If the landlords' fee is paid in the Registration office or the Collector's office, as suggested in section 26C, it would be to the benefit of the occupancy raiyats. The object of this section is to determine the procedure as to how the landlord's fee should be paid when transfer of a holding takes place: I submit I cannot conceive of a better scheme than that embodied in section 26C. For these reasons I support the retention of section 26C and oppose its deletion as moved by Khan Bahadur Maulvi Ekramul Huq.

Mr. W. H. NELSON: The object of this amendment is frankly destructive. The mover of this amendment has similar amendments dealing with most of the sections in this clause of the Bill and the speech he delivered on this motion might have been delivered with

equal relevance or with equal irrelevance about any other section in the Bill. He frankly admits that his object was that if this section was deleted it would render the procedure unworkable.

The other speakers have dealt with the general principles of the Act and I do not propose to follow them. No one has attacked any of the details of section 26C which deals with procedure though two gentlemen have said that section 26C is necessary. But as no one has criticised any of the details of section 26C, I do not propose to go into them and I simply oppose the amendment.

The motion that in clause 23 the proposed section 26C shall be omitted was then put and a division taken with the following results:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Sarkar, Rai Sahib Rebati Mahan.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Ramea Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Promatha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Bose, Mr. S. C.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dowding, Mr. T. W.
Dutt, Babu Saral Kumar.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Khan, Mr. Razaur Rahman.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Martin, Mr. G. S.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakanath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.

Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Dr. Kumud Sankar.
Ray, Maharaja Jogindra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Ray, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sochoe, Mr. F. A.
Sanyal, Babu Sashindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 20 and the Noes 84 the motion was lost.

Mr. PRESIDENT: I propose to have one discussion on items Nos. 289 and 290.

Maulvi NURUL HUQ CHAUDHURI: Sir, I beg to move that in clause 23, in sub-section (*1*) of the proposed new section 26C, line 3, after the word "bequest" the following words shall be inserted, namely, "or an exchange or a gift under Muhammadan Law." If this clause be allowed to remain as it has been drafted it will make documents which have hitherto been exempted from registration liable to compulsory registration. It will make a gift under the Muhammadan Law compulsorily registrable, whereas the present position is that a gift under the Muhammadan Law is recognised by a Court of Law without being registered. Sir, every Muhammadan, be he a Minister of Government or a knight or an ordinary commoner is deeply attached to his own religious law. We cannot suffer an indirect invasion on that law in this manner. Sir, the sacredness of the Shariat has been guaranteed by the law of the land, and I protest

6 p.m.

against this indirect method of attacking the Muhammadan Law. The Transfer of Property Act has guaranteed this right and the courts of law have been acting on this assumption that every transfer by Muhammadans by way of gifts is valid whether it is made by a registered document or not. I would therefore propose that an exception should be made in favour of the Muhammadan law of gift.

My second suggestion is that an exchange of land should be excluded from the operation of this section. Usually small cultivators are compelled to exchange their lands in order to consolidate their holdings. It has been for a long time the experience in this country that on account of the extreme subdivision of their holdings the cultivators find it difficult to manage their property, and the remedy is to consolidate other holdings. In many parts of the country small holdings will be found distributed in several small plots, and it ought to be the policy of Government to encourage the consolidation

of these holdings. The only way to do this is to allow the cultivators to exchange their plots freely amongst themselves. My object in proposing this amendment is that the right of free exchange which has hitherto been allowed to the tenants should not be taken away from them; on the other hand, in the interests of the country this practice should be encouraged as much as possible. I therefore propose that an exception should be made both in favour of exchange as well as in favour of Hebas and Waqfs under the Muhammadan Law.

Mr. A. K. FAZL-UL HUQ: I move that in clause 23, after the word "bequest" in line 3 of sub-section (*1*) of the proposed section 26C, the following be inserted, namely, "Heba, Waqf or any other dedication for pious or charitable purposes."

My amendment does not raise any controversial point. Since giving notice of this amendment I have considered the position. My suggestion simply is that Heba or Waqf or any other dedication for pious or charitable purposes should be exempted from being made by registered instrument. The rule of the Muhammadan Law which is well known on this point is that both Heba and Waqf can be made verbally, and if this is the Muhammadan Law, I do not see any reason why that provision of the Muhammadan Law should be interfered with, or in other words if an exception can be made in the case of a bequest, why it should not be made in the case of Heba and Waqf. Since Heba and Waqf can be made without any written document, I do not see any reason why Heba and Waqf should not be excluded from the operation of this section. That is all that I have to submit, and I shall be glad to hear from the Member in charge of the Bill whether he has any objection to this amendment. I formally move this amendment, and if I am satisfied that there are reasons for not pressing it, I will consider that position.

Khan Bahadur MUHAMMAD ABDUL MUMIN: The point that has been raised is that when Heba and Waqf can be made without any written document under the Muhammadan law, they should be excluded from the operation of this section. The intention of this section is that if occupancy holdings are transferred by Heba or Waqf, it is desirable that in the interests of all parties concerned the transfer should be made by a registered instrument. The law referred to by the movers is a special legislation, for instance under that law properties valued at Rs. 50 or less do not require registration. Under this section every transfer, except as specified here, shall be made by a registered instrument. The idea is that for the satisfaction of all parties concerned all these documents should be registered, for it is difficult for the landlords to know and effect mutation unless notices are given to them. It will avoid litigation if the proposal under the section is given effect to.

Maulvi SYED NAUSHER ALI: We have heard the reasons put forward by the Government member against this amendment, and I must confess that we are not satisfied with them. It is no reason to say that there should be a registered document. It has been stated it will save litigation. It is well known that in the Transfer of Property Act the Muhammadan rule of law has been recognised. Now, I do not find any distinction whatsoever between those transfers and the transfers under the Bengal Tenancy Act. Mr. Mumin has raised the point that here Government have not made any exception when the value is Rs. 50. If the provisions of this Bill are passed into laws, it will be absolutely necessary to make that to ascertain the amount of landlord's fee. So far as Hebas and Waqfs are concerned, there is no question of landlord's fee and I do not see any reason why the documents should be compulsorily registered. As stated by Mr. A. K. Fazl-ul Huq, they can be made even verbally. Why then impose the cost of registration? I hope the House will not be satisfied with the reasons given by Mr. Mumin which I characterise as no reasons for the proposition advanced by Government.

With these words I support the amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order, Sir. Is it open to the House to change any provision of the Transfer of Property Act or of the substantive Muhammadan Law?

Mr. PRESIDENT: No without the previous sanction of the Governor-General.

Khan Bahadur Maulvi AZIZUL HAQUE: Was the sanction of the Governor-General taken on the point that the Muhammadan Law is being changed?

Mr. PRESIDENT: But the question is whether the Muhammadan Law is at all affected?

Khan Bahadur Maulvi AZIZUL HAQUE: I want your decision on this: that the substantive Muhammadan Law being that Heba and Waqf can be made verbally, does not this section change that aspect of the Muhammadan Law?

Mr. PRESIDENT: This is a matter on which I am reluctant to express any opinion offhand. The safest course for me to follow in this matter is to leave the matter in the hands of the Hon'ble Member in charge of the Bill, who is always surrounded by experts.

The motion of Maulvi Nurul Huq Chaudhuri was then put and a division taken with the following result:—

AYES.

Abbott, Mr. S. G.
Atiqullah, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Simaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Maulvi Nurul Huq.
Choudhury, Maulvi Khorshed Alam.
Fyfe, Mr. J. H.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
James, Mr. P. E.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Khan, Mr. Razaur Rahman.
Mukerji, Mr. S. C.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Khan Sahib Abdus.
Wordsworth, Mr. W. C.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Md. Altaf.
Bagchi, Babu Remes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Bose, Mr. S. C.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Casselis, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Forrester, Mr. J. Campbell.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Khan, Babu Debendra Lal.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Natiniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.

The Ayes being 28 and the Noes 69, the motion was lost.

The motion of Mr. A. K. Fazl-ul Huq was then put and a division taken with the following result:—

AYES.

Abbott, Mr. E. G.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Maulvi Nurul Huq.
Choudhury, Maulvi Khorshed Alam.
Fyfe, Mr. J. H.
Huque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Khan, Mr. Razaur Rahman.
Luke, Mr. N. R.
Mukerji, Mr. S. C.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Sarker, Rai Sahib Rebati Mahan.
Suttar, Khan Sahib Abdus.
Wordsworth, Mr. W. C.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Ramea Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prematha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Bose, Mr. S. C.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dowding, Mr. T. W.
Dutt, Babu Sarat Kumar.
Eddis, Mr. A. McD.
Forrester, Mr. J. Campbell.
Ghose, Babu Amarendra Nath.
Ghose, Mr. H. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Maiti, Babu Mahendra Nath.
Martin, Mr. O. S.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Prevash Chunder.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Reikat, Mr. Prosanna Deb.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Babu Manmatha Nath.
Ray, Dr. Sidhan Chandra.
Ray, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Maliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.

The Ayes being 28 and the Noes 71, the motion was lost.

Mr. A. K. FAZL-UL HUQ: Sir, before you pass on to the next item permit me please to make a statement which may affect the conduct of the business of the House. The voting on the last amendment will show that we are going to be absolutely at the mercy of an unsympathetic majority. We feel that a rule of Muhammadan Law has been violated and we cannot now consent to partake in the proceedings. We expected fully that the Government members, at any rate, would remain neutral. We, however, express our gratitude to the European members and those of my Hindu brethren who voted with us; but we record our emphatic protest that this amendment should have been defeated and defeated in spite of the fact that we pointed out that a rule of Muhammadan Law has been violated.

With the greatest respect to the chair, Sir,—we do not mean any disrespect to you, Sir, for whom we have the highest respect, we propose not to take any further point in the proceedings this evening.

[After making the above remarks, Mr. Fazl-ul Huq and almost all the Muhammadan members began to withdraw from the Chamber.]

The Hon'ble Sir PROVASH CHUNDER MITTER: Mr. Fazl-ul Huq, will you kindly listen to me?

Mr. A. K. FAZL-UL HUQ: We shall listen to you to-morrow.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I was going to make a statement.

Mr. PRESIDENT: But they are not prepared to listen to you.

The following amendments were called but not moved:—

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 23, after the proposed section 26C (*1*), the following shall be added, namely:—

"Provided that a transfer by sale or otherwise of an occupancy holding except a sale for arrears of rent or for Government dues, or for dues to a co-operative society or bank under the supervision of Government; to a person other than a settled raiyat or a permanent resident of the village when the land sold is situate, will be binding on the transferrer only if, or in so far as, leaves to him not less than 16 bighas of land in area in the village and the tenant will be entitled to recover from the transferee through the civil court as much land as secures for him 16 bighas in area in the village without payment of any compensation to the transferee."

Maulvi TAMIZUDDIN KHAN to move that in clause 23, in the proposed section 26C (*2*), lines 1 and 2, for the words "shall not register any such instrument" the words "shall not register any instrument of sale" shall be substituted.

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 23, in the proposed section 26C (2), line 2, after the word "instrument" the following shall be inserted, namely:—

"Except instrument where the transferee is alleged to be a settled raiyat or permanent resident of the village where the land conveyed is situate, or is a co-sharer or relation of the transferrer and."

Mr. A. K. FAZL-UL HUQ to move that in the proposed section 26C (2), after the word "unless", in line 2, the following be inserted, namely, "except in the case of transfers without consideration".

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 295-303, and 310 and 311.

The following amendment was called but not moved:—

Khan Bahadur Maulvi MUHAMMAD ISMAIL to move that in clause 23, in the proposed section 26C (2), line 2, for the words "sale price" the words "annual rent" shall be substituted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh: I beg to move that in clause 23, in the proposed section 26C (2), line 2, after the words "sale price" the words "or value" shall be inserted.

Sir, my idea in moving this amendment is to cover certain cases of gift, exchange and lease.

Mr. W. H. NELSON: Sir, we would accept the amendment subject to a change in wording.....

Mr. PRESIDENT: Mr. Nelson, I am sorry to interrupt you. I think I should call upon some of the members and ask them whether they want to move the amendments which stand against their names.

The following amendments were called but not moved:—

Mr. JOGESH CHANDRA GUPTA to move that in clause 23, in the proposed section 26C (2), line 5, after the word "unless" the following words shall be inserted, namely, "the instrument contains a statement by the landlord or his duly empowered agent that the landlord's fee has been duly paid or."

Maulvi SHAMSUR-RAHMAN, Srijut NAGENDRA NATH SEN, Babu AKHIL CHANDRA DATTA and Khan Bahadur Maulvi AZIZUL HAQUE to move that in clause 23, in the proposed section 26C (2), sub-section (c) shall be omitted.

Mr. ALTAF ALI to move that in clause 23, for proposed section 26C, subsection (2) (c) substitute the following, namely:—

"(2) (c) the acknowledgment by the landlord of a fee (hereinafter referred to as "the landlord's transfer fee) of the amount, provided by section 26D transmitted either personally or by postal money-order."

Mr. SYED MD. ATIQULLAH to move that in clause 23, after the proposed section 26C (2) (d), the following proviso shall be added, namely:—

"Provided that when a transferee amicably pays the landlord's transfer fee to the landlord or the landlords and obtaining a receipt thereof signed by the landlord or the landlords or his or their gumastas authorised in this behalf, produces it to the registering officer he will not be required to deposit landlord's L. T. fee under the above section and the fact of this payment shall be noted in the prescribed register."

Babu AKHIL CHANDRA DATTA to move that in clause 23, after the proposed section 26C (2), the following shall be inserted, namely:—

"(2a) Before presentation of the instrument for registration, the transferee shall tender for payment to the landlord the prescribed landlord's transfer fee. The landlord shall, on receiving the same, make an endorsement on the instrument. The registering officer shall register the instrument containing such endorsement. If the landlord refuse to accept the landlord's transfer fee, the transferee shall note the fact of tender and refusal on the instruments whereupon the registering officer shall register the instrument if it is accompanied by the prescribed landlord's transfer fee and the prescribed cost of transmission."

Mr. PRESIDENT: Amendment No. 296 is now open to discussion; but I am afraid I shall have to adjourn the Council now. I think we better take it up to-morrow.

Mr. W. H. NELSON: Sir, we are prepared to accept this amendment subject to a slight change in the wording. The words which we propose are "where there is no sale price."

Mr. PRESIDENT: I suppose there is no objection to this change.

Babu JOGINDRA CHANDRA CHAKRAVARTI: We object to this change.

Mr. PRESIDENT: Then we shall take up the question to-morrow.

Adjournment.

The Council was then adjourned till 2-45 p.m. on Thursday, the 23rd August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Thursday, the 23rd August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, and 114 nominated and elected members.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was resumed.

Mr. PRESIDENT: We were discussing item No. 296 when we adjourned yesterday.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I desire to withdraw the objection which I raised with regard to this amendment, I am perfectly satisfied now and I accept it.

Mr. W. H. NELSON: I may remind the House, Sir, that the amendment was to put in after the words "sale price" the words "or where there is no sale price, value."

Mr. PRESIDENT: This amendment was moved by Maharaja Shashi Kanta Acharjya Chaudhuri. Does he accept the change?

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh: Yes, I accept this change; I have no objection.

The following amended motion was then put and agreed to:—

"That in clause 23, in the proposed section 26C (2) line 2, after the words 'sale price' the words 'or where there is no sale price, value' shall be inserted."

The following amendment was called but not moved:—

Babu PROMOTHA NATH BANERJEE to move that in clause 23, in the proposed section 26C (2) (c), after the words "provided by section 26D" the words "where there is custom to pay the landlord's fee" be added.

Mr. PRESIDENT: I would postpone the discussion on No. 305 and take up No. 306.

The following amendments were called but not moved:—

Babu AKHIL CHANDRA DATTA to move that in clause 23, proposed new section 26C(2), clause (d) shall be omitted.

Babu SACHINDRA NARAYAN SANYAL to move that in clause 23, in the proposed section 26C (d), line 2, after the words "landlord's transfer fee" the words "by postal money-order" shall be inserted.

Mr. PRESIDENT: I propose to have one discussion on Nos. 308 and 309.

The following amendments were called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that in clause 23 to sub-section (2) of the proposed section 26C the following proviso be added, namely:—

"Provided that no deeds of transfer by exchange of a portion of any occupancy holding shall be valid and admitted to registration, and those deeds of exchange shall only be admitted to registration where the lands proposed to be exchanged appertain to the same estate or tenure under the same proprietor or tenure-holder and no other deeds of exchange will be registered."

Babu AKHIL CHANDRA DATTA to move that in clause 23, after clause (d) of the proposed new section 26C (2), the following shall be added, namely:—

"Provided that the landlord's transfer fee and the cost of transmission thereof shall not be paid to the registering officer under clauses (c) and (d), respectively, except in the case of those landlords who had intimated in writing to the collector their intention of receiving the transfer fee through the collector and caused their name

to be entered in a register to be kept by the collector and registering officer in that behalf to be designated as 'a register of landlords willing to receive transfer fee through the collector'."

The following amendments were called but not moved:—

Mr. ALTAF ALI, and Maulvi SHAMSUR-RAHMAN, and Srijut NAGENDRA NATH SEN to move that in clause 23 the proposed sub-section (*3*) of section 26C be omitted.

Mr. ALTAF ALI to move that in clause 23, in the proposed sub-section (*3*) of section 26C, line 3, for the words "to the Collector" the words "to the landlord or his common agent, if any" be substituted.

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in bill clause 23, in proposed section 26C (*3*) the words beginning with "and the Collector" and ending with the words "in the prescribed manner" shall be omitted.

Mr. ALTAF ALI to move that in clause 23, in proposed sub-section (*3*) of section 26C, lines 3 and 4, the words "the landlords' transfer fee, the prescribed cost of transmission thereof and" be omitted.

Mr. ALTAF ALI to move that in clause 23, in the proposed sub-section (*3*) to section 26C, lines 6 and 7, the words "the landlords' transfer fee to be transmitted and" be omitted.

Babu SACHINDRA NARAYAN SANYAL to move that in clause 23, in the proposed section 26C (*3*), after the words "landlord's transfer fee to be transmitted to," the words "by postal money-order" shall be added.

Rai HARENDRANATH CHAUDHURI to move that in clause 23, in the proposed section 26C, sub-section (*3*), line 8, after the word "landlord" the words "or landlords" be inserted and in line 9 for the word "his" the word "their" shall be inserted.

Babu NALINIRANJAN SARKER to move that in clause 23 at the end of the proposed section 26C (*3*) the following proviso shall be added namely:—

"Provided always that if the name of any co-sharer landlord is not disclosed in the notice such a co-sharer landlord shall have right to

enforce payment by the transferee of the holding of his share of transfer fees and such transferee on making such payment shall be entitled to realize the same from the other co-sharer landlords to whom the transfer fee might have been transmitted as herein provided."

Mr. BIJOY PRASAD SINGH ROY to move that in clause 23 to the proposed section 26C, sub-section (3), the following proviso be added, namely:—

"Provided that the transferee shall not acquire any right by the transferer unless and until the said transfer fee and notice are received by the landlord."

Mr. SYED MD. ATIQULLAH: I beg to move that in clause 23, after proposed section 26C (3), the following proviso shall be added, namely:—

"Provided that in case there is no common agent, a co-sharer landlord after transmission of landlord's fee to the Collector shall be entitled to draw his proportionate share of landlord's fee by an application to the Collector on that behalf, on production of extracts of Collector D. Register or finally published settlement records or any other document showing his share and title.

Provided also that when a sole landlord purchases a holding or a share or a portion thereof no deposit of landlord's fee need be made and no notice need be served. And when a co-sharer landlord purchases a holding or a share or a portion thereof and his share is specified in the instrument of transfer he should be entitled to deposit only the amount of landlord's fee proportionate to the share or shares of the remaining co-sharers."

Sir, the amendment is a very simple one and speaks for itself. My intention in moving it is to safeguard the interests of a co-sharer landlord when there is no common agent. There are many petty landlords who cannot afford to have any common agent and more or less they realise rents themselves. Under the present law the landlord's fee cannot be drawn unless all the co-sharer landlords apply together jointly. If this circumstance continues the petty co-sharer landlords cannot draw their money and it is only for the benefit of the petty poor co-sharer landlords that I have proposed this amendment, and I do not want to detain the House long over this motion.

Mr. W. H. NELSON: This is a matter which can be disposed of by rules framed under the Act. It is not necessary to make a specific provision in the Act. Under the Act Collectors will transmit the landlord's fee to the landlord or his common agent, and provision will be made in the rules for transmitting the fee to the landlord or landlords.

The motion of Mr. Syed Md. Atiqullah was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kaziruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Promotha Nath.
Banerjee, Mr. A. C.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Maulvi Nurul Huq.
Choudhury, Maulvi Khorshed Alam.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Huq, Mr. A. K. Fazl-ul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakanath.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Tasajit.
Poddar, Mr. Ananda Mohan.
Rahman, Maulvi Shamsur-
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Nalinranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Asharjya Chaudhuri, Maharaja Shashi Kanta.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. B. J.
Cash, Mr. A. J.
Ghose, Mr. N. C.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
James, Mr. F. E.
Mitter, the Hon'ble Sir Provash Chunder.
Momin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Ray, Babu Nagendra Narayan.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Stapleton, Mr. N. E.

The Ayes being 51 and Noes 23 the motion was carried.

The following amendments were called but not moved:—

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR-RAHMAN to move that in clause 23 in the proposed section 26C (4), lines 6 and 7, the words "and the landlord's transfer fee provided by section 26D" be omitted.

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR-RAHMAN to move that in clause 23, proposed section 26C, sub-clause (*5*) of the same clause be omitted.

Mr. ALTAF ALI to move that in clause 23, in the proposed sub-section (*5*) of section 26C, line 2, for the words "to the Collector" the words "to the landlord named in the notice or his common agent, if any" be substituted.

Maulvi SHAMSUR-RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 23, in the proposed section 26C (*5*), line 3, the words "the landlord's transfer fee" shall be omitted.

Mr. ALTAF ALI to move that in clause 23, from the proposed sub-section (*5*) to section 26C, lines 3 and 4, the words "the prescribed cost of transmission thereof" be omitted.

Mr. KIRAN SANKAR ROY and Dr. KUMUD SANKAR RAY to move that in clause 23, proposed section 26C, clause (*5*), the words "and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner" shall be omitted.

Mr. ALTAF ALI to move that in clause 23, from the proposed sub-section (*5*) to section 26C, lines 5 to 7, the following words be omitted namely, "and the Collector shall cause the fee to be transmitted to, and the notice to be served on the landlord named in the notice or his common agent, if any."

Khan Bahadur Maulvi MUHAMMAD ISMAIL to move that in clause 23, the proposed section 26C (*6*) shall be omitted.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 23 in proposed section 26C (*b*), lines 1 and 2, the words "as an arrear of rent of the holding, or" be omitted.

According to the proposed amending Bill the landlord is supposed to get a certain amount as landlord's fee but what that amount will be, will be decided later on. Now on the supposition that he will receive a certain fee we are going to decide the sale price of the holding. According to this Bill various things are sought to be included in the sale price, that is, if the land is under mortgage and if the intending transferee pays up or agrees to pay up the mortgage money that money will be considered as sale price. There is some reason in that.

3-30 p.m.

But I do not see according to what reason the arrears of rent which the intending transferee may agree to pay up then and there will also be treated as the sale price. If the transferee pays up the arrears of rent to the transferrer, the transferrer will not be able to retain a single pice out of that as he will be liable to pay the amount as rent along with damages to the landlord, if the landlord sues for rent. Therefore, if this amount is also taken to be the sale price, what will happen? The result will be that the landlord will not only get the whole amount but will also get a certain percentage on that amount, as transfer fee if subsequently the House decides that the landlord is to get a certain amount as landlord's fee. Therefore, this provision in the Bill, that the arrears of rent which are agreed to be paid up by the transferee should be considered as sale price, seems to be highly inequitable. With these words, I place my amendment before the House.

Mr. F. A. DACHSE: Sir, if the transferee pays to the raiyat who is selling his land the money which that raiyat owes to the landlord for the occupation of that land before the date of the transfer—if it is an amount of money which he owes to the landlord whether the transfer is made or not—then that money is really a part of the consideration money. If the fee has to be paid on the consideration at all, it must be paid on any indirect form of such consideration; but I doubt if this payment of arrear rents can be styled indirect. I oppose the amendment.

The motion of Maulvi Tamizuddin Khan was then put and lost.

The following amendments were called but not moved:—

Maulvi SHAMSUR-RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 23, in the proposed section 26C, sub-section (7) shall be omitted.

Mr. ALTAF ALI to move that in clause 23, from proposed sub-section (7) of section 26C, lines 1 and 2, the words "and the cost of transmission" be omitted.

Mr. ALTAF ALI to move that in clause 23, from proposed sub-section (7) of section 26C, lines 3 and 4, for the words "registering officer" the words "landlord or his common agent, if any" be substituted.

Mr. ALTAF ALI to move that in clause 23, in the proposed sub-section (7) to section 26C, line 4, after the word "Court" the words "together with the cost of transmission" be inserted.

The following amendment was not put as it was covered by the foregoing decision of the Council:—

Babu MANMATHA NATH ROY to move that in clause 23, to proposed section 26C, the following proviso shall be added, namely:—

"Provided always that when the landlord or his common agent, if any, has acknowledged in writing in the prescribed manner the receipt of the notice and the landlord's transfer fee, the provisions of sub-sections (2), (3), (4), and (5) of this section shall not apply."

The following amendment was called but not moved:—

Babu SACHINDRA NARAYAN SANYAL to move that in section 26C, after sub-section (7), the following shall be inserted, namely:—

"(8) When there are co-sharer landlords and there is dispute regarding the shares or when the shares are not stated in the notice the Collector may decide the dispute summarily and distribute the transfer fee accordingly after 30 days from the date of his decision; but such decision will not prevent the civil court from taking cognizance of any application which any landlord may make if he is dissatisfied with the decision of the Collector."

Mr. PRESIDENT: Mr. Bannerjee, will you please move the second part of your amendment No. 346?

Babu JITENDRALAL BANNERJEE: I respectfully submit, Sir, that the proviso will be meaningless except in connection with the previous portion. My amendment proposes the insertion of a new clause, and the proviso must be taken up in connection with that clause. It would be meaningless to discuss the proviso without the clause.

Mr. PRESIDENT: Do you want to move the two parts together?

Babu JITENDRALAL BANNERJEE: Yes.

Mr. F. A. SACHSE: Sir, this amendment really deals with section 88. According to this section if a transfer is made of a portion of a holding, the landlord is bound to divide the holding into two different holdings. I would suggest that it would be much more convenient, if this amendment could be taken up when section 88 is taken up.

Mr. PRESIDENT: It is a reasonable suggestion. Have you any objection Mr. Bannerjee to put it off?

Babu JITENDRALAL BANNERJEE: No, Sir, I am quite agreeable.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 345 and 347.

The following amendments were called but not moved:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, to move that in clause 23, after the proposed section 26C (7), the following sub-section shall be added, namely:—

"(8) In the case of any kind of transfer where there are co-sharer landlords the required notice to be served on them must show the name and share of each such landlord and the transfer-fee shall be transmitted to each of them separately."

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that at the end of section 26C the following sub-section shall be added, namely:—

"(8) In the case of any kind of transfer, where there are co-sharer landlords the transfer fee shall be transmitted to the common agent, and where there are no common agents to each of them separately as far as possible."

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, I beg to move that in clause 23, the proposed section 26D shall be omitted.

Sir, you will find that in this clause an attempt has been made to legalise the payment to the landlord of a fee of 25 per cent. for every transfer. I have informed the House times without number that this provision is utterly unjust. This provision is of a nature which none but bad and unscrupulous persons could put in in a Bill which is to be passed into law.

Is it not a fact that in 1879 the Rent Committee gave it as its opinion that the tenants should pay only two per cent. on the price which a holding fetched at the time of sale? Do yon mean to say that their decision was given at a time when they had taken a sufficient quantity of opium? Is it not a fact that the members of the commission went into the whole question of payment of salami to the landlord? They studied the situation, examined the facts and arrived at the conclusion that they did. Were they right or were they wrong?—that is the question which you ought to have decided before giving your final verdict to the question now under discussion.

Babu SURENDRA NATH BISWAS: On a point of order, Sir. What will be the effect on section 26C if this motion is carried? Will not section 26C be meaningless then? The only question that may arise now with regard to the transfer fee is about the proportion, the amount of the fee. The deletion of section 26D would mean the doing away of all transfers. Is that in order, Sir?

Mr. PRESIDENT: What I find is that if this amendment is carried, some consequential amendments will be necessary but that makes no difference, as such a contingency can always be provided for. So, Khan Bahadur may proceed with his speech.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, I was talking about the Rent Commission, and certainly, Sir, they did not take opium when they wrote their report. They were men with conscience and broad outlook. But it would appear that the gentlemen of the Select Committee had no sympathy for the poor, they had no vision, they did not look into the facts, and, therefore, they could not come to the right conclusion. Were they right when they fixed 25 per cent. for transfer for the entire province of Bengal? Were they not out to give more than the purchase-money of holdings to the zamindars in a few years' time? If the zamindars were to sell their zamindaries today, the price that they will get now will be the very price that they will get in five years' time—or even in less than that time on account of the premiums which they will get by the sale of their tenants' holdings. Is it this that you want to be done? Certainly you have no business to do that. The way in which the members of the Select Committee and the Government have done things seems to convey the the idea that they are out to support this measure. It is undoubtedly a pity that the masses who looked upon these people as their protectors will find out that they wanted to protect nobody but themselves. To the Government I would say that when protecting and advancing the interest of the zamindars, the British people are giving away their own interests, the interests of their own progeny. The people of this country will think that the British people have not the capacity to rule over them. Be sure that they will not look upon you for protection: they will look for protection somewhere else.

You know that these persons have no arms, that they are helpless; but that is no reason why you should not perform your duty—the duty of the ruler to the ruled. The poor have been plundered by many people and in many ways and they have been ever and anon and this last stroke of the law will effectively plunder them for good and all. For our own safety let us remember the lines of Mr. Burke—the plunderers never want arms.

Sir, even now I would request gentlemen who have hearts and the gentlemen on the Government benches to look into the matter. On the admission of Mr. Sachse, 25 per cent. is not just: on the admission of other officials also 25 per cent. is absolutely unjust.

I may point out to the members of this House that by giving the right to the zamindars to realise premium on part transfers, you give them at least 10 times over their actual dues. You know it for certain that some years ago the transfer of occupancy holdings were not many, but gradually the number has risen. And as soon as this Bill is passed into law, the trnsfers will be more in number than they are now. I may say that it will be at least five times over. Under these circumstances, should you not look to these facts? You should have looked to the part transfers which have till now been made, and for which under the law the zamindars were not entitled to a single pice.

Mr. PRESIDENT: What are you actually proposing, Khan Bahadur? You are drifting away from your amendment.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, I propose that this section should be omitted from the Bill, and that is why I have to bring all these points before the House.

Mr. PRESIDENT: It is incumbent on you to tell the House as to why you want to omit the proposed section. There is no occasion for you to go beyond that. Please do come to your point.

Khan Bahadur Maulvi EKRAMUL HUQ: I find that you are giving 25 per cent. and I ask you again will you be justified in doing so? I ask the members of the Swaraj party—will they be justified to give such rights to the zamindars? So I propose that this section may be omitted from the statute book and that provisions may be made elsewhere to the effect that a lesser amount may be given. If this is done, the purposes of the Act will be fulfilled.

Mr. F. E. JAMES: I oppose this amendment and in doing so I should like to explain the attitude of the European members of the House to this vexed question of salami. In the first place we are prepared to accept the general principle of salami in view of existing conditions and in view of its general application in different parts of Bengal. But we feel that the figure which is included in the Bill by the Government is a figure which we cannot accept. We feel that in all view of the circumstances it is too high and therefore we as a group will pull our full strength, if possible, against the 25 per cent. Having said that I would suggest to the members of this House on all sides that it is most desirable in the interests of both the landlords and of

the tenants and indeed of the Government that some agreement should be reached on this question of salami, if possible. There is no question of an agreement being reached on the proposal that there should be no salami. That is generally accepted. Therefore is it not possible for the different sections of this House to come to an agreement on the amount of salami to be charged? If such an agreement could be reached I would appeal to the Hon'ble Member in charge to reconsider his decision to stick to the actual Bill as it stands and to accept such a proposal if it comes from different sections of the House. I am well aware in making this suggestion that there are many difficulties in the way of reaching an agreement. But I would make a special appeal to the landlords in this House, for after all their interests are in the majority, I would make a special appeal to them not simply for the sake of an immediate settlement but in view of the future. We should, when we are discussing this Bill, not simply look to the immediate settlement in this House. We should visualise the ultimate effect of the clauses of this Bill upon the relations between the landlord and tenants in different parts of the province. There is bound to come a time, sooner or later, when demands will be put forward in this House by representative tenants themselves, and unless those who are now in power are able to look forward and take a statesmanlike view, it is highly probable that those demands when they come before this House will be much more extreme than ordinarily would be the case. I am sure that in appealing to the statesmanship of the leading landlords in this House I am not appealing in vain. I do earnestly press upon this House the importance of coming to an agreement on this question. If not, then the whole country will witness the unseemly spectacle of different sections in this House arguing for hours on and on the matter of the amount of salami. Such a discussion if allowed to continue is likely to be bitter and is likely to sow seeds of enmity in the minds both of tenants and zamindars. Is it not therefore possible for us at an early stage in this discussion to reach some measure of common agreement?

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): Sir, I desire to say a few words by way of explaining the position of Government with regard to this question of salami. As regards the amendment now before the House I may say at once that it is not possible for Government to accept it. The Bill before the House is the result of deliberation for years and the amount of salami mentioned therein was settled after a very careful enquiry. In Sir John Kerr's Committee, in the Select Committee as well as in the Special Committee after careful enquiry they settled that percentage. This is a Government Bill and as my duty is to pilot this Bill, if it comes to a question of voting, it will be my duty to vote for the provisions of the Bill, but

of course the House can overrule the Government's proposals. Having said this I would like to join in the appeal made by Mr. James. In the wider interests of the landlords and tenants it is eminently desirable that they should come to some agreement. What that agreement should be it is not for me or for the members for Government to say, but if they come to an agreement then whatever the proposals we may have made in the Bill, we shall have no hesitation in accepting the agreed percentage, but at this stage I would like to mention that issues have not been kept clearly in view. Too much of passion has been imported and the issue as placed by some of the speakers of this House has been as if it was a question between the rich and the poor. It is true that a section of the landlords are rich. It is equally true that the vast majority of those who are described as landlords in the Bengal Tenancy Act are not rich. In another place I have shown that the average income of the landlords is only about 6 rupees a year. However, be that as it may, so long as a man occupies the position of landlord he belongs to one particular class and so long as a man occupies the position of a raiyat he belongs to another class. If there is anything vital to national advancement it is to banish class warfare. If the landlords find that giving up a certain percentage may not be to their immediate gain, I am sure they will find, even if they look upon it from the point of view of rupees, annas and pies, it will be to their ultimate gain. On the other hand I will also ask my friends who are fighting the tenants' cause to consider that if they find that giving a little more to the landlord which according to their own ideas is not fair even from the view of rupees, annas and pies, it will be to their ultimate benefit. Let the aim of both these classes be to come together so that they can produce more and then divide. Let not substance of the landlord and tenant be wasted in litigation and the root cause of litigation is bad feeling. Let us on the floor of this House where representatives of different classes are assembled for discussing this important question—let us make our mind to come to an agreed decision. And in coming to that agreed decision the friends of tenants may also remember that many tenants are raiyats as regards to some plots—and landlords as regards to other plots. The big zamindars should remember that litigation costs a good deal. To conclude our position is this: If the different groups or the majority of the different groups would come to an agreed decision we would not only welcome it but would be prepared to accept it. But if they are unable to come to a decision we must stand by the Government Bill.

Khan Bahadur Maulvi AZIZUL HAQUE: I think the remarks of my friend Mr. James have not come a moment too soon. I think it is time whether we belong to the zamindars' or to the tenants' party, whether we belong to Swarajist or non-Swarajist party, it is time that we must look before and behind and come to a definite decision.

But, Sir, I have not been able to understand my Hon'ble Member, Sir Provash Chunder Mitter, because I am sure that our ability to come to a common agreement depends more upon the action of Government than anybody else. If the Government takes up the attitude of sticking to the provisions of the Bill, the whole Bill and nothing but the Bill, if the Government will not say that 25 per cent. is enormously high in a large majority of districts, then it is no use.....

The Hon'ble Sir PROVASH CHUNDER MITTER: May I interrupt my friend? May I make an appeal to him? About the percentage there are provisions in the Bill and when those provisions come under discussion I shall make my position clear. As regards the percentage I would appeal to Khan Bahadur not to spoil the effect of Mr. James's appeal and my humble suggestion. When we come to the question whether it would be 5 per cent. or 25 per cent. we shall discuss it in full but at this stage I appeal to the members of this House to consider Mr. James's suggestion.

Mr. PRESIDENT: My position is somewhat difficult. I allowed Mr. James's to make an appeal to the House with regard to the question now before us. Having allowed him to do so, I must allow a member to say what he has got to say about. However, my direction to the House is that although a member, at this stage, is entitled to speak on the appeal made by Mr. James, he should not drift away any further from the amendment under discussion.

Maulvi NURUL HUQ CHAUDHURI: On a point of order, Sir. Are we not going to be allowed to speak on the amendment of Khan Bahadur Maulvi Ekramul Huq?

Mr. PRESIDENT: Order, order. You always seem to be over anxious to speak. Khan Bahadur Maulvi Azizul Haque is in possession of the House. You can rise when he has finished and ask for leave to speak.

3-45 p.m.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, it was never my intention to drift away from the subject under discussion but I was appealing to Mr. James as well as the Revenue Member, not on our own behalf, but in the interest of the welfare of the people of Bengal and I make this submission that this question should be settled. I think we are gifted with a little amount of common sense, we within ourselves have been able to know the temper and opinion of the House and I welcome the effort on the part of Mr. James that a round table conference, if possible, should be convened. The most difficult thing

is—who is to convene the conference. May I request you, Sir, as President of the Council, to convene a round table conference in your Chamber? If you be so pleased as to accept my suggestion, I think difficulties would be avoided to a great extent. Otherwise it is very difficult, for the Hon'ble Member-in-charge to convene a conference, it is very difficult for Mr. James to convene such a conference, it is equally difficult for Mr. Sen Gupta, not to speak of ourselves. I think I am voicing the opinion of the members on this side of the House when I make such an appeal for compromise although we do not yield an inch from our ideal. Whether in the best interest of the country or in the spirit of compromise I think each and every one of us in spite of our difference of opinion can agree that a compromise is a necessity. At the same time we are not forgetful of the principle that stand before us. Remembering the ideal it is quite open to us to yield and to come to an agreement and from that point of view I am making my appeal so far as the motion is concerned. I am not saying anything to Government because I believe the ultimate responsibility, whatever the House may decide as regards this measure, will lie on Government and on Government alone.

Mr. A. K. FAZL-UL-HUQ: We have arrived at one of the most crucial points in the debate so far as this Bill is concerned and I do not perhaps exaggerate when I say that the results of the discussions in this Council and the manner in which this Bill will emerge out of these discussions may have a far-reaching effect on the political events not merely in this province but may have repercussion on the political events throughout the whole of India. The Bill before this House is one of the most important pieces of legislation that have come up before the Bengal Legislative Council within the last half a century. The march of events in the west, the various movements in the quick-moving atmosphere of Europe have deeply stirred up matters not only in Asia, generally, but also in India, particularly in Bengal. Even the unlettered raiyat now understands his right, and I can assure every member of this House that although the raiyats as such have got no representatives in this House, they are keenly watching our debates and they are intelligent enough to make a forecast of the manner in which this Bill will emerge out of this Council. At at a critical point like this I am so thankful to my friend, Mr. James, that he has come forward to hold an olive branch and make an appeal to all parties of this House to try to avoid unpleasant discussions in this House over more or less unimportant questions.

Coming to the immediate point under discussion, avoiding as much as possible going into details, I would begin by making an earnest appeal to the zamindar representatives in this House. Let them not go away with the impression that we on this side of the House are a set of landless vagabonds or that we have got absolutely no stake in

the country. Not one of us is a cultivator or a son of a cultivator or a grandson of a cultivator. We are also small landlords, and although I do not like personal references, I do not use the language of vanity when I say that I myself am one of the voters in the landholders' constituency of the Dacca Division for election of members to the Legislative Council. We have got our own rights at stake, and we understand our responsibilities, but, Sir, our position is a most difficult one. We have come to this Council on the votes of the people, 95 per cent. of whom are raiyats and the position is this: that we must either take up their cause or we must resign our seats in this Council. We have got absolutely no business to remain here if we do not take up the cause of the countless millions who have trusted us with their votes in the hope that we shall put forward their point of view before this Council. The appeal that I am making to the zamindar members of this Council is to consider this position of ours. I will not refer to the statement which has been made by Sir Provash Chunder Mitter that the average income of a zamindar is Rs. 6 a year. No conclusion can be drawn from these averages. You can no more deduce political theories or economical theories on the basis of these averages than you can build your doors to suit the average height of mankind. That you cannot do, but consider the position as it is. What is this landlord's fee? It is a sort of unearned income of the zamindars. There is no doubt that the zamindars receive landlord's fee, but is it an ordinary incident of a zamindari right? Supposing the tenants in the zamindari do not make any transfer, you do not get anything. Supposing the tenants at the present moment try to evade the provisions of the law, you get nothing. You may, I say respectfully and with the utmost deference to your feeling, restrict your feeling of avarice and be content with as little as you can afford to do. Is 25 per cent. of the consideration money such a necessity to you that if you do not get it, you may have to sell off your zamindari? What is it to the zamindars whose income exceeds Rs. 50,000 annually? What is it to them if they do not get this small amount of 25 per cent? Can they not be magnanimous, can they not be generous, can they not set up an example which will endear them to the hearts of the millions by foregoing this small amount? After all, according to arithmetical calculation, it is only an infinitely small quantity of first order. You can easily neglect it.

Now, Sir, coming to the Government block, I appeal to those members who have been in the Settlement Department serving the best years of their life in dealing with raiyats—I appeal to them to consider for a moment whether this 25 per cent. is not too high. Do the zamindars get this money at the present moment? I will say most decidedly, No. During the last few years, a practice has grown up in my district, Bakarganj, not to execute deeds of transfer at all but to execute deeds of usufractuary mortgages for 2,000, 5,000 or

50,000 years. These are to all intents and purposes transfers, but yet you cannot touch them. One common device is to leave alone a fraction of the holding and transfer the rest. These raiyats know what subterfuge is; if they do not know this, there are members of the legal profession to advise them. If that is the position, why should not Government consider whether the premium is high? So far as the raiyats are concerned, they have not got any representatives of their own in this House, but we on this side of the House will always be very glad to listen to any reasonable proposal that may be put forward. An appeal has been made to you, Sir, to convene a round table conference; I do not think that this can come within practical politics. I appeal to Mr. James not to loose a moment over this matter. Let him have a live conference, let him have a conference of the representatives of the zamindars, let him have a talk with Mr. Sachse and Mr. Mumin, let the Swarajist members of this House send a few representatives to that conference, and we will also send a few representatives of ours. With his Christian catholicity, with his love for the people, with his usual magnanimity, Mr. James will be able, I am sure, to come to some understanding which will put an end to all these disputes for the future. Let Mr. James take up this question in right earnest and have a talk with some of the members in the lobby, when in the meanwhile we will be discussing certain other amendments, and I think a settlement can be arrived at this very day. We cannot put off this question, we cannot keep this hanging on for days and days together and I think the Hon'ble Member-in-charge will co-operate with Mr. James and weigh this proposal. To me it seems the best man to take charge of the conference is Mr. James. Let him take two representatives from each group and let there be a discussion. I do hope that by this, we shall be able to come to some conclusion. If not, I can assure the House that no man will be able to bring about a compromise between the conflicting interests that are represented in this House.

With these few words, I make an appeal to Mr. James to take up this matter and materialise the proposal which he has been good enough to put before the House.

Mr. RANJIT PAL CHAUDHURI: Sir, it doubtlessly appears at first sight that the landlord's fee of 25 per cent. to be allowed in every case of transfer by the tenant as provided in section 26 (D) of the Bill is a hard allowance. But in view of the 10 per cent. extra on the price quoted to be paid by the landlord on pre-emption of the proposed transfer and in view of the various obligations that the average landlord has to discharge towards the State and the Administration when request-letters are sent in the shape of a command by the authorities and the manifold duties he is expected to perform towards his tenants, it is surely not an unreasonable demand. Time there

was when landlords as a class would by custom and practice receive "Nazars" in many shapes from their tenants. But with the change of time and conditions all such acceptances are now irregular and landlords do not take anything from the tenants which is not sanctioned by strict provisions of law. It is evident that in consideration of the abolition of these ancient dues, the landlord's fee was substituted. With the high cost of the necessaries of life and for other equally reasonable considerations it is necessary that there ought to be a rise in the scale of their fee as well. But being solicitous of the best interests of our electors we, the landlords, are prepared to accept a still reasonable figure.

Maulvi NURUL HUQ CHAUDHURI: Sir, I appreciate the sentiment which urged Mr. James to bring forward a proposal of a compromise and I honour him for his sentiment. Situated as we are in this House we may be compelled to accept the compromise. Practically there are no representatives of the raiyats in this House; the depressed classes are not represented here. It is only we, the few Muhammadans, who have taken upon ourselves the advocacy of the tenants' cause, and with the Muhammadans have joined some large-hearted Hindus who though they have been nominated have the courage of their conviction and are now standing side by side with us. I appreciate also the services that we have from time to time received from European gentlemen who having no interest in the country have looked at the question between tenants and landlords from an impartial point of view. We may have to accept the compromise. If a robber enters my house I may have to compromise with him. At the same time I want to make it clear to the House that the principle underlying this section is unjust to the tenants. It is my duty, Sir, to point out that the ancient rights which the tenants of this country have enjoyed and which are now threatened by this piece of legislation.....

Mr. PRESIDENT: I would point out that these broad questions are not before the House at the present moment and you should confine yourself to the amendment we are discussing. You are not supposed to dilate upon ancient rights.

Maulvi NURUL HUQ CHAUDHURI: May I ask you, Sir, to allow me to make my submission as regards the question whether or not this section should find a place in the Act and I want to show my reasons why I think this section should not find a place in the statute book.

Mr. PRESIDENT: It is far from my mind to stifle discussion, but I would not allow you to go over the ancient history, which we are not discussing at the moment.

Maulvi NURUL HUQ CHAUDHURI: I was not certainly talking of the period 500 or 600 years back.

Mr. PRESIDENT: Will you please come to subject matter of the amendment before the House?

Maulvi NURUL HUQ CHAUDHURI: The Bill is a vast scheme of confiscation and spoliation and how vast it is, I will show to the House by referring to the.....

Mr. PRESIDENT: We are now discussing the amendment, and not the whole Bill.

Maulvi NURUL HUQ CHAUDHURI: I am now only concerned with this particular proposition, i.e., the section of the Bill which proposes a scheme of confiscation and spoliation. There has been nothing like this during the last hundred years in this country and I am sure no other country can show a parallel with such confiscating legislation during the last hundred years. It has been reserved for Bengal, for the Council of Bengal, and for the Bengal Government, to propose a legislation which is going to confiscate one-fourth the value of all the landed properties which the tenants now possess in this country and to increase, from time to time, the confiscation.....

Mr. PRESIDENT: You are not making an attempt to act up to the directions which I have given to you, and if you persist in irrelevance, I shall be compelled to point that out to the House and ask you to resume your seat.

Maulvi NURUL HUQ CHAUDHURI: I want to know my position. If I am not entitled to show the reasons why this section should not find a place in the Act, then I had better resume my seat.

Mr. PRESIDENT: Yes, you may resume your seat if you have nothing to say about the amendment before the House.

Maulvi ABUL KASEM: May I suggest to you, Sir, that all the amendments with reference to clause 26D be taken together and a general discussion allowed on the amendments, because we may not naturally be relevant while speaking to the amendment itself. There are many of us, who may not agree with some amendments, but may agree with the others.

Mr. PRESIDENT: If you had waited a little more you would have found me taking amendment No. 351 and the succeeding allied ones all together. The amendment which we are now discussing stands by itself, quite independent of others, and has got to be discussed separately.

Maulvi NURUL HUQ CHAUDHURI: On a point of order, Sir. Am I entitled to know why you did not allow me to speak?

Mr. PRESIDENT: Firstly, because you yourself did not want to proceed and, secondly, because you persisted in your attempt to repeat irrelevant matters in spite of my repeated warnings.

Maulvi NURUL HUQ CHAUDHURI: Is this your opinion, Sir, that I am not entitled to speak?

Mr. PRESIDENT: I never said so; I allowed you to rise on a point of order. But I must ask you not to argue like this.

Maulvi NURUL HUQ CHAUDHURI: May I raise a new point of order?

Mr. PRESIDENT: Yes, let me see what your new point is.

Maulvi NURUL HUQ CHAUDHURI: The point is this: whether it is within the power of the Chair to say before a member has spoken that he is repeating.

Mr. PRESIDENT: You did attempt to persist in irrelevance. In any case, it is perfectly within my power to curb a speaker who actually tries to flout the authority of the President by ignoring his instructions, given according to the rules, which he is here to observe and see that other members also observe.

Maulvi NURUL HUQ CHAUDHURI: May I rise on a new point of order, Sir?

Mr. PRESIDENT: This will be your last.

Maulvi NURUL HUQ CHAUDHURI: The point is this; whether or not it is within the province of the President to anticipate a speech.

Mr. PRESIDENT: Order, Order.

Mr. J. M. SEN GUPTA: Mr. President, Sir, I was very glad to hear that Mr. James had made an offer to the House that an attempt should be made, if possible, to come to a compromise on the question of salami. I wish Mr. James had added one or two other questions with the question of salami. One particular question comes before my mind, which he conveniently might have added to the one which is under discussion, and that is the question of pre-emption or post-emption, as the actual provision in the proposed Bill provides. Sir,

I am not going just now to say anything with regard to the amendment which is being discussed as to whether or not, a provision for a salami in the case of transfers in favour of zamindars should be or should not be made in the Act. That question I am not going to discuss just now; nor shall I discuss the question as to what should be the exact amount of the salami. It is enough for me to say with Mr. James that I and my party do not consider that 25 per cent. is low enough: it ought to be lower and we ought to make an attempt to come to some agreement with regard to the question of salami with all parties at a figure which is lower than 25 per cent. I think that, with that expression of opinion from the Swaraj party, it would be possible for all the groups to meet, and if possible, to come to an agreement on these questions.

Maulvi SYED NAUSHER ALI: Sir, I beg to join with Mr. Sen Gupta in the suggestion that he has made. The two questions are connected together—the question of post-emption and the question of salami. If there be a talk of compromise, I submit, Sir, that the talk should be with regard to both; and I think that is the feeling of all the members on this side of the House. With these words, I would appeal again to Mr. James to make an attempt to come to some agreement.

Maulvi ASIMUDDIN AHAMAD spoke in Bengali, the English translation of which is as follows:—

"Sir, I rise to support the motion of Khan Bahadur Ekramul Huq which I consider to be quite necessary and fair. I have no doubt that the questions of landlord's fee and right of pre-emption as dealt with in the present Tenancy Bill will produce great discontent in the country in future. The Bill practically offers the landlords large rights which they have never possessed thereby making the future position of tenants unsafe. I want to ask Government on what principle have they made this new departure when drafting the Bill? Has this Bill been introduced merely with a view to increasing the income of the landlords by raising their dues to one-fourth or one-fifth of the total valuation in all cases of transfer of land? I want to ask Government whether the landlords of Bengal privately approached them to dispose of the questions of landlord's fee and right of pre-emption as it has been done in the Bill or have they done so at their own instance? Many members of the Indian Civil Service who are neither landlords nor tenants have expressed opinion that by giving the landlords the right of pre-emption and 25 per cent. landlord's fee, a new machinery of oppression of the tenants is going to be set to work. I think that the section 26D is going to be a fatal weapon against the tenants, which will bring about their total destruction. It is a matter for deep regret that the tenants are going to

be destroyed by the pressure of legislation. It is still more regrettable that impartial judgment cannot be obtained in this House. I have been very much disappointed at the attitude of my Swarajists friends, all the more, because I sincerely believed that they would support the cause of the tenants. But the speech of my friend Mr. Pal Chaudhuri has profoundly disappointed me. I do not think that Mr. Pal Chaudhuri ever said during his election fight that he would support 25 per cent. landlord's fee and right of pre-emption. (Interruption from the Swarajist benches.) I do not think that the Swarajists have clearly enunciated their position on these questions. I know that they are freely joining parties and dinners which are being given by the landlords. Parties had been given in Shambazar and at Lower Circular Road and some of my Swarajist friends and Maulvi Abul Kasem attended them. I have proof that Maulvi Abul Kasem went there. I do not say that the landlords should not get anything. Even if the section is omitted they will continue to get all their customary dues. There is, therefore, no reason why this great additional burden should be put on their shoulders by means of legislation."

Mr. J. M. SEN GUPTA: May I, Sir, rise on a point of personal explanation? A statement has been made by Maulvi Asimuddin Ahamad that the Congress Party is pledged to support a salami of 25 per cent. As a matter of fact, they are not: they are opposed to it. They think that a salami of 25 per cent. is too high. (Hear, hear.)

The motion that in clause 23, the proposed section 26D shall be omitted was then put and lost.

Maulvi NURUL HUQ CHAUDHURI: Sir, I beg to move that in clause 23, in the proposed section 26D, in clause (*a*), lines 1 and 2, the words " or a portion or share of a holding " shall be omitted.

My reason is obvious. The law does not allow the transfer of a whole holding, but under the Bengal Tenancy Act, as it stands, there is nothing to prevent the tenant from transferring shares of a holding. The landlords are absolutely powerless to prevent such transfers. I find from the report of the Inspector-General of Registration that holdings worth about 17 to 20 crores of rupees are transferred annually, and most of these transfers are transfers of shares of holdings. It would further appear that the average value of each transfer is very small. We all know that during the last few years the transfer of such holdings has grown immensely. The landlord is not entitled to prevent such sales under the law. The landlord would have no right to pre-emption. It is only when the whole holding is sold that the law gives the right to the landlord to treat the holding as abandoned and he has got the right, of re-entry. But rarely if ever, the tenant sells anything more than a fraction of the holdings. Sir, it is only in

cases of distress or other causes due to the activities of the landlord—or worse still the mahajans—that the whole holding is transferred from the possession of the tenant to some other people. But, in cases of transfers of parts or shares, there is no law by which the landlord can compel the tenant to pay the "Marhatta chauth" that is now demanded of him in the Bill. But what are you going to propose now? You are going to give a new right to the landlord to levy a toll upon every tenant who has sold only a fraction of his holding.

Sir, there is a fallacy underlying the arguments of some of my friends. It is assumed without much examination of the proposition that the non-transferability is a right of the landlord. I deny the correctness of this proposition. If the holding is not transferable, it is not because the landlord has got a right in the holding but because it is one of the incidents of the holding. We all know that under archaic law the land was never transferable. We all know that in India and in Europe, in early times, landed property was not transferable. Because the theory of the law was.....

Mr. PRESIDENT: You are again going into ancient history. I will not allow you to do that.

Maulvi NURUL HUQ CHAUDHURI: Well, Sir, I shall limit myself to the present question. I submit that because the land of a landlord cannot be transferred, it does not constitute a right in the landlord; and therefore it would be monstrous to say that the landlord should have a right to a premium on the transfer of a holding. But if you are going to give him some compensation, I would ask the House to limit the payment of premium to those cases where the whole holding is transferred. If you impose a salami upon all transfers—whether it is a part transfer or a whole transfer—you will be imposing upon the tenants an impost which will amount to 4 to 5 crores of rupees annually. I see, Sir, the very mention of this figure brings water in the mouths of my Swarajist friends and the landlords alike. But if they would think out the consequences, they would find that this new impost would break the back of their tenants. If you impose this sum of 4 to 5 crores of rupees annually on the tenants, it will only go to the pockets of the landlords. Of course, it will help the indigent landlords who are the object of special solicitude on the part of the Hon'ble the Revenue Member. The agricultural wealth of the country will diminish, and a state of things will arise in the country, when those who are responsible for producing the wealth of the country will suffer an irretrievable decay and in the end the whole country will have to pay dearly for the ill-matured scheme that has been proposed to-day.

4-30 p.m.

It is possible that the House will not accept my amendment.....

Mr. JOGESH CHANDRA GUPTA: May I enquire, Sir, whether my learned friend who sits usually on this side of the House has gone to the other side in order to speak behind the back of the landlords? (Laughter).

Maulvi NURUL HUQ CHAUDHURI: I have to be afraid of landlords in a House the majority of which are landlords. This is a very serious proposition and I hope the House will think seriously about this measure before it gives its sanction to levy this impost upon transfers of shares and mark you, Sir, the consequences of this measure. The landlords will be entitled to take 25 per cent. as their fees on every transfer and I can well presume that most of the lands will come in the market several times over during the period of a century with the result that the landlords will buy away all the lands and get salamis several times to the value of the lands in the bazar.

Sir, it is a system of impost of which there is no parallel in any country. It will discourage cultivation. Nobody will put money in the land because if money were put into the land landlords will come down upon them and demand a chouth from them on account of improvement of the land which has been due only to the industries and capital of the cultivators. The effect will be to discourage the improvement of the soil. If, Sir, this House is anxious for the agricultural improvement of the country, if it wishes to see a prosperous and free tenantry in this province, there is no other alternative but to accept the modification I have proposed.

Maulvi ABUL KASEM: I rise to support this motion and that I will do with a very few words. Under the present Act the landlord is not entitled either by custom or otherwise to get any salami for the transfer of a fraction or a whole holding. By this piece of legislation you are giving the landlord the right of imposing or realising salami from the tenant which he was not entitled to before and that this is a fact will be admitted both by the Members of Government and by the representatives of the landholding classes and by my friends on my left. I hope that this amendment will be accepted.

Mr. F. A. SACHSE: I am not sure if it is a fact that the landlord has no legal right of re-entry in case a part or whole of a holding is transferred without his consent, but it is perfectly true that there are insuperable difficulties in his enforcing that right. Hence it is a common practice for a man who has really made a bargain to sell his whole holding to keep nominally an infinitesimal share in his own right in order that the landlord may not be able to get the customary fee for

the transfer of a whole holding. In enquity and in law there is far more reason why the landlord should have the right of re-entry if a share or part of a holding is transferred than if the whole holding is transferred, because a partial transfer is much more of a nuisance to the landlord, it complicates his accounts, it makes his litigation difficult, and it practically prevents him from exercising the rights which the law intended to give him. The present section 26 has been framed with the idea of making the present custom legal and removing defects; if our Bill is to have any good result in that direction we must deal with all together, at one time, with part transfers as well as whole transfers.

If the last two speakers really think that the system which they have described by which a raiyat keeps a tiny part of his holding just in order to prevent the landlord from exercising his legal rights is a system with which we should go on, than I am sure they are not speaking for the great majority of raiyats either in this House or outside it.

It is of course true that landlords nowadays as a rule do not get a fee on transfer of part holdings. That is a thing which ought to be taken into consideration in fixing the fee for both whole and part transfers. I may assure you that it has been considered very carefully whether it would be possible to have a different fee for part transfers and for whole transfers. The objection to different scales of fee is that the custom would continue and spread of making all transfers piecemeal simply with the idea of giving the landlord a smaller fee than the law proposes to provide. I oppose this amendment simply on the ground that, if it were carried, there would be no transfers at all in future of whole holdings.

The motion of Maulvi Nurul Huq Chaudhuri was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiquilah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Sarker, Rai Sahib Rebati Mohan.
Sulaiman, Maulvi Muhammad.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Remes Chandra.
Banerjea, Babu Prometha Nath.
Banerjea, Mr. A. C.
Basu, Babu Sasi Sekhar.

Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Chaudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dowding, Mr. T. W.
Dutt, Babu Saral Kumar.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Himatsingka, Babu Prabhu Dayal.
Hogg, Mr. G. F.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharrul, Khan Bahadur.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Khan, Mr. Razaur Rahman.
Lala, Babu Sareda Kripa.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Martin, Mr. O. S.
McCluskie, Mr. E. T.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Naskar, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Chaudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Reikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Maharaja Jogindra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Dr. Bidhan Chandra.
Ray, Mr. Bijay Prasad Singh.
Roy, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 23 and the Noes 86 the motion was lost.

[At 4-45 p.m. the Council was adjourned and it reassembled at 4-55 p.m.]

Mr. PRESIDENT: I propose to have one discussion on items Nos. 351, 352, 353 (1st part), 354, 355, 358, 359, 361, 362, 363, 364, 365 (1st part), 366, 371, 372, 373, 374, 375, 378, 379-81, 382 and 383.

The following amendment was called but not moved:—

Maulvi KASIRUDDIN AHAMAD to move that in clause 23, in proposed section 26D (*a*), in lines 4, 5 and 6, for the words "twenty-five per cent. of the consideration money as set forth in the instrument of transfer," the words "six times the produce-rent" shall be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Khan Bahadur Maulvi Muhammad Ismail in whose name this amendment stands, may I have your permission to move it, Sir?

Mr. PRESIDENT: Yes, you may move it.

Khan Bahadur Maulvi AZIZUL HAQUE: I move that in clause 23, in the proposed section 26D (*a*), lines 4 to 6, for the words "twenty-five per cent. of the consideration money as set forth in the instrument of transfer," the words "twice the rent" shall be substituted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I beg to move that in clause 23, in section 26, for the words "twenty-five per cent." whereon they occur the words "thirty per cent." be substituted.

Sir, to consider this clause the existing state of things should first be taken into account. Under the present law the right of property in the soil vest with the landlord absolutely, and he has the power to restrict any alienation in the land transferred. In cases where landlords recognise the transferee they would insist at present on the payment of a transfer fee or salami as the value of such permission. It would appear from the Settlement Reports that in certain extreme cases the salami demanded and paid has been over 200 per cent. of the sale price. It would also appear from the same reports that with few exceptions the minimum that is insisted on by way of salami or premium is 25 per cent. of the sale price. In many cases much more. Many members of the House have asserted that the customary rights of all classes will be respected with regard to this Bill. It has been admitted by Mr. Sachse that generally the fee realised is 25 per cent., which I consider is the minimum, while he has ignored the fact that in cases where a less fee has been demanded and paid it has been done in consideration of the peculiar and hard circumstances of the case. While the exercise of this discretionary power of the landlord is being taken away and his position is being reduced gradually to that of a rent collector or a rent receiver it is in the fitness of things that an adequate price should be given to them and not the minimum of 25 per cent. should be fixed. This value or price is the consideration money that has got to be paid for such transfer of the landlords' right and it is in equity that this consideration money should be adequate and not the minimum. One of the valued rights of the landlord is being taken away and the landlord agrees to part with the right provided that the House sees that an adequate value is given to them, and to decide upon the adequacy I hope the members should not be arbitrary but should be guided by the existing state of things, that is to say, a mean and an equitable mean, on the transfer fee should be fixed at 30 per cent. which, I think, is the adequate value for such right.

Babu SACHINDRA NARAYAN SANYAL: I beg to move that in proposed section 26D (*a*), line 4, for the words "twenty-five per cent." the words "thirty-three per cent." shall be substituted.

I consider that 25 per cent. is too inadequate. As a matter of fact landlords get no less than 30 per cent. The slight increase proposed by me is not very high and will in no way cause hardship.

Babu ROMES CHANDRA BACCHI: I beg to move that in clause 23, in proposed section 26D (*a*), line 4, for the words "twenty-five per cent." the words "twenty per cent." shall be substituted.

Babu ROMES CHANDRA BACCHI: (Spoke in support of the motion which was inaudible from the reporters' table).

The following amendments were called but not moved:—

Maulvi ASIMUDDIN AHAMAD, Mr. SYED MD. ATIQULLAH and Babu AMARENDRA NATH GHOSE to move that in clause 23, in proposed section 26D (*a*), line 4, for the words "twenty-five per cent." the words "fifteen per cent." shall be substituted.

Babu AMULYA CHANDRA DATTA to move that in clause 23, in the proposed section 26D, for the words "twenty per cent." wherever they occur in the said section 26D, the words "twelve and a half per cent." be substituted.

Maulvi ASIMUDDIN AHAMAD moved that in clause 23, in proposed section 26D (*a*), line 4, for the words "twenty-five per cent." the words "twelve and a half per cent." shall be substituted.

Babu PROMOTHA NATH BANERJEE moved that in clause (*a*) of the proposed section 26D, for the words "twenty-five per cent." the words "twelve per cent." be substituted.

Babu AMARENDRA NATH GHOSE moved that in clause 23, in proposed section 26D (*a*), line 4, for the words "twenty-five per cent." the words "two per cent." shall be substituted.

Maulvi ASIMUDDIN AHAMAD moved that in clause 23, in proposed section 26D (*a*), line 4, for the words "twenty-five per cent." the words "seven per cent." shall be substituted.

The following motion was called but not moved:—

Khan Bahadur K. C. M. FAROQUI to move that in clause 23, in the proposed section 26D (*a*), line 4, for the words "twenty-five per cent." the words "six and one-fourth per cent." shall be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: I move that in clause 23, in the proposed section 26D, the word "five" be substituted for the word "twenty-five" and that the word "two" be substituted for the word "six" wherever they occur.

I reserve my remarks for the present.

Maulvi ASIMUDDIN AHAMAD moved that in clause 23, in proposed section 26D (*a*), in line 4, for the words "twenty-five per cent." the words "five per cent." shall be substituted.

The following amendment was called but not moved:—

Babu NAGENDRA NARAYAN RAY to move that in clause 23, in the proposed section 26D (*a*), line 4, for the words "twenty-five per cent." the words "two per cent." shall be substituted.

Maulvi SYED NAUSHER ALI moved that in clause 23, in clause (*a*) of the proposed section 26D, for the word "twenty-five," the word "one" be substituted.

The following amendment was called but not moved:—

Mr. SYED MD. ATIQULLAH to move that in clause 23, in the proposed section 26D (*a*), lines 4 to 6, for the words beginning with "twenty-five per cent." and ending with "transfer" the words "rupee one only" shall be substituted.

Mr. PRESIDENT: All these amendments are now open to discussion.

Maulvi ABUL KASEM: This question of premium to be paid to landlords have been engaging the attention of the House for a long time and that it is a most important factor to consider in the present piece of legislation. Sir, in the Bill the premium to be paid by a tenant to the landlord on a transfer has been put down at 25 per cent. of the purchased money. I think that that amount is not only too high but it is absolutely unjustifiable. We have been told that Government have come to this decision by the fact that customarily the landlords realise 25 per cent. For the sake of argument I admit that such was the case. But why was this so? Under the old Act the tenants have no right of transferring land which are vested with the landlords who took khas possession of the holding on a transfer and on this account an exhorbitant demand would be made and would be occasionally paid. Sir, yesterday on behalf of Government it was stated that the policy of Government was to get the best value for the seller. May I ask whether this handicap of 25 per cent. of the

property will give the seller the best value? My friend the member for Nadia in his speech has mentioned about landlord's responsibility and the landlord's duty to his tenants for which we have been told that the landlord has a right of claim for the premium of 25 per cent. I submit that at the present day the landlord's duty is confined to the realisatoin of rent and the ejection of the tenant. It goes no further. If the landlords had realised their duties and discharged their responsibilities, the condition of the province would not have been what it is. What about the irrigation tanks and channels in western Bengal? They were excavated by landlords in olden days—big tanks for irrigation purposes. They are now being silted up and the landlords do not care to have them re-excavated. What about our embankments? Every year agricultural lands are allowed to be destroyed by floods and the landlords look at it unconcerned. Not only do they not discharge their responsibility but they do not also join the tenants in protective measure because they do not want to pay their share of the cost. If the landlords had helped the tenants in this respect the conditions of the tenants would not have been worse and there would have been no need of legislation.

5-15 p.m.

We have been further told that as the cost of living has gone up, the zamindar must have an increased income. Sir, am I to understand that with the advent of the luxury of the west, we, the cultivators, the tenants, the real people of Bengal, have to provide for the luxuries of the idle rich? Am I to understand that because the zamindars, whom I prefer to call the idle rich, have got their motor cars, therefore the tenants must pay for their up-keep? This is a preposterous proposition, I should say. If it is a question of the ordinary necessities of life, namely, food and clothing—the price of clothes have increased considerably—then it is the tenants who deserve the sympathy of the people to enable them to make two ends meet. There is no doubt that many of the zamindars have not got a very big bank balance to their credit, but that is quite a different thing in comparison to the position of the poor cultivators who almost every year find themselves at the end of their resources and cannot meet the bare necessaries of life and sometimes have to suffer very badly. If the cultivators had improved their economic position, I could have realised the claim of the zamindars for this 25 per cent. We have been told that this Bill as has been presented to this House protects custom. I say there was no custom. The custom has been created by the zamindars, because the tenants were left at the mercy of the zamindars who were the makers of this famous custom. I think the zamindars should get a little and that amount should be only to meet his extra expenses, if any, or a little honorarium as the word "salami" does signify, as nazar, for the substitution of the

tenant; but the amount fixed in the Bill is too high as has been admitted by the leader of the Swaraj party. My friend who spoke on the motion and recommended that it should be reduced to 20 per cent. was good enough to say that he had many friends who would like to have this lower figure; he was afraid that a still lower figure would not receive the approval of the House; he further added that the popular opinion was that the amount should be reduced. If the popular opinion is in favour of reduction, I submit that it is immaterial whether this House agrees or not; we are here to express the popular opinion. We know that this House have deliberately voted against us and we have lost the game on many amendments, but still we should persist in having a much lower figure because we think we should record our votes on the side of righteousness and justice as we did on some other motions. I hope my friends will not only accept a lower figure but will vote with us in the same lobby, and it is immaterial whether it is carried or not. Do my friends think that they will not be able to carry it because of the Government's persistency in sticking to the provisions of the Bill as framed by them? I hope my friends will consider the reasonableness of the matter and accept a much lower figure.

There has been a talk about compromise. I for one should be too glad if we could come to an understanding on the principle of equity and justice, and I hope such an understanding will be arrived at. At the same time I think 5 per cent. of the consideration money or better still two years' annual rent will be a legitimate and reasonable amount that should be paid as premium to the zamindar. I cannot understand why the zamindar should be so much affected by the amount of salami. What does it matter to him whether A, B or C has the land? If A has it, he will not interfere with the rights and privileges of the zamindar. Therefore, there is neither any reason nor justification for demanding a sum which I will characterise as prohibitive. The zamindars have a great advantage over the tenants. When the Permanent Settlement was made, the revenue, except in Burdwan, was fixed on the gross rental as it was at that time, but what was the area and proportion of the cultivated land in those days? Except in Burdwan, I do not think it came up to 15 per cent. of what it is to-day. (Question). Sir, the authority of my statement has been challenged. I would only ask my friend to compare the land revenue receipts of Eastern Bengal with those of Northern Bengal and he will find the difference. The zamindars have during these years received an enormous increase in their income and revenue. Therefore, they have no cause of complaint; the Permanent Settlement have given them the privilege and right of increasing their income. I had to refer to the Permanent Settlement because it was stated that the zamindar's income had gone down since and on

account of the change in circumstances there was little increase. I submit that this is an unearned income of the zamindars. I would be very glad to see that a remedy is found out. If the Permanent Settlement is abolished, there would be an equitable distribution between the cultivator and the zamindar. Those who have the history of the Permanent Settlement know that the miseries of the tenants received no consideration then. I hope the House will decide this question on the principle of equity and justice.....

(Here the member having reached the time-limit resumed his seat).

Srijut TARAK NATH MUKERJEA: Sir, unfortunately being myself a landlord, I am placed in such an unfortunate position that whatever I will say it may be misconstrued by some of my friends here. But let me sincerely assure them that I yield to none in this House in my sincere sympathy for the raiyats. I have the honour to represent the raiyats of my district in this House and being connected with the Hooghly Local Board and District Board I always come in close and intimate touch with them and as such I am always in a position to fully realise and feel for their troubles, disadvantages and difficulties. But I must frankly admit that some of my friends here, in their great zeal and over-anxiety to do good to the raiyats have on occasions been over carried by the flood of their feelings to such a great extent that instead of doing real good to them it has become all the more harmful to the raiyats.

I fully appreciate the sincerity of purpose of those of my friends. But as too much of any thing is bad it has also proved on occasions to be rather injurious to the raiyats.

Speaking for myself, I may assure the House that I stand here to-day neither as a landlord nor as a tenant but as a humble follower and loyal member of the Congress whose only aim is to do proper justice and justice alone to the country at large, irrespective of colour, class or creed. The Congress party is no respector of any particular class or community and it always realises the just and legitimate rights of all.

As humble followers of this great party, which always aims at justice and equity, some of us here who belong to the landowning class are also fully conscious of our responsible position of great trust and duty so we consider it to be our bounden duty to always meet every just and legitimate proposal in favour of the raiyats.

So in the discussion of this Bill we have all along uniformally and consistently followed this policy of doing proper and equal justice to all alike. We support the proposal of giving full occupancy right to the tenants and we are equally liberal so far as the rights over the trees are concerned.

Maulvi NURUL HUQ CHAUDHURI: (While the President was engaged in conversation with the Secretary). On a point of order, Sir. Is not a member, when he addresses the House, entitle to receive the attention of the Chair?

Mr. PRESIDENT: That is a frivolous interruption and I must discourage it.

Srijut TARAK NATH MUKERJEA: But, Sir, the claim of the landlords as regards the transfer fee has a long history which it is not possible for me to discuss at length now. I should only say that it is a proved fact which cannot be successfully challenged that the landlords are entitled to get a certain amount as mutation fee. Some of my friends may say that if this be done then it will be granting only halting and half-hearted concessions to the demands of the tenants. But to them I may only say that it will be equally an infringement of the proprietary right vested in the landlords by the Permanent Settlement. The claim of the landlords to the protection against undersirable tenants, who are undesirable not always to the landlords alone but in some cases also to the neighbouring tenants as well, and a fair compensation for the surrender of a part of their rights can never be an unreasonable claim.

So, Sir, no fair, just reasonable and equitable compromise can be achieved if both the sides demand its own pound of flesh. Whatever may be said by those who are interested in creating bad blood between landlords and raiyats, it must be admitted that the general situation as a whole was never very unhappy in Bengal. Despite occasional frictions between the two parties, landlords and tenants have managed to live on on the whole in mutual sympathy, peace and co-operation.

Experience proves and I am fully convinced that in these days of national awakening and political consciousness, the mutual support and united efforts of both zamindars and raiyats can achieve many great things of national benefit and utility and will certainly lead us nearer to our national goal, viz., the attainment of Swaraj. It will be a great national calamity if in an attempt to deal with it, the old spirit of mutual friendship and harmony between the two classes is replaced by a feeling of enmity which is the precursor to all class wars. There is absolutely no reason why all these differences should not be settled in a way satisfactory to both sides.

I earnestly appeal to all the members to adjust the proposals without rousing worst passions on the part of both, but to bear one thing in mind always—the supreme test by which all proposed land laws are to be judged, namely, their capacity for improving the condition of the country-side through the growth of an enlightened and sympathetic body of landlords on the one hand and a prosperous and contented tenantry on the other. To my friend, Sir, the interests of

the landlords and tenants are inter-dependent. It will therefore be a suicidal policy to seek to secure advantages for the one at the entire expense of the other. When it is an admitted fact that in the case of a transfer of a holding the landlord is entitled to get a certain amount as transfer fee, it only remains to be decided what will be the proportion of this fee. It is also admitted that the rate of fee is now different in different districts according to custom. It is more than 25 per cent. in many districts specially in East Bengal, and it may be less than 25 per cent. in some places as can be found from Government settlement records.

The Congress party took into account and considered all these facts. It is the noble aim and ambition of every landlord of the Congress party to move with the times and to rise equal to the occasion. We have very carefully considered the situation as regards the question of landlord's fee and have come to the conclusion that the proposal of 2 per cent. or 33 per cent., 5 per cent. or 30 per cent. 8 per cent. or 25· pr cent. as the transfer fee is not a fair, just and equitable proposal and as such not worthy of our support.

Maulvi NURUL HAQ CHAUDHURI: I rise on a point of order and it is this: Is it the Parliamentary practice that speakers on two sides are alternately called on to speak?

Mr. PRESIDENT: This is again a frivolous interruption. If you think that you can take up the time of the Council in this fashion, I must say that you are very much mistaken.

Mr. SARAT C. BASU: Sir, so far as this amendment is concerned several speeches have been delivered and sentiments expressed, but before we give expression to sentiments we ought to see that we do not lose sight of the justice of the question. My friend, Maulvi Abul Kasem, has pictured to the House the apathy of the zamindars in the matter of looking after the interests of the cultivating class, in not giving them facilities for irrigation, making arrangements for embankments and other matters in which the zamindar's help is needed for the protection of zamindars' properties. It has been pictured to the House that embankments are neglected; it has been told to the House that facilities for irrigation are not provided and that existing tanks have been filled up and that the zamindars are doing nothing in re-excavating them. It is a woeful tale and I perfectly agree with my friend, Maulvi Abul Kasem, in the picture he has drawn. But, Sir, we ought not to get angry with the zamindars, because they are not doing these things We must try and realise what are the actual circumstances under which you give them 25 per cent. The zamindars are not pocketing the money by realising rents from the raiyats. Though they are pocketing the money we must see where the money

goes. I may say almost the whole thing goes to the coffer of the Government treasury (Question). In the former days it is true that the zamindars used to look to matters of irrigation and embankments. But since the Permanent Settlement what has been their position. When the zamindars represented to Government that their revenue had been assessed at rack-renting basis and that they would not be able to look to irrigation and embankments unless the Government came to the rescue, they were told by the Government "Don't mind for the irrigation and embankments, we the Government are going to arrange for this and we will take up the matter of irrigation and embankments into our hand." Since then Acts and Regulations have been enacted whereby it was made criminal on the part of the zamindars to take in hand anything in irrigation and embankment matters. There is the Irrigation Act and there is the Embankment Act in which fetters have been given to the zamindars if they want to move in any direction. The zamindars also represented "If you assess the revenue in this way how can we look to the cultivation." The Government replied "Don't be afraid of that. We will come to the rescue of the people. The zamindars must not henceforth realise anything in the nature of sayer collection." From the year 1793, or to be more accurate a few years before that—I believe from the year 1787—these sayer collections were taken away from the hands of the zamindars and the Government said that these were sovereign rights and the sovereign would realise the sayer collections in the best way possible and would provide facilities for irrigation and embankments. Why were these sayer collections taken away from the hands of the zamindars? Before that time the zamindars used to look to irrigation and make arrangements for the embankments for the protection of the cultivators. It is all very well to say that the zamindars have not been doing their duty in these matters. I am not myself a zamindar in the real sense of the term. I have no zamindari to speak of and I am never in love with the zamindars and from the beginning of my life I have been fighting the zamindars. They are considered by me as the worst enemies of the people, but the measures which Government have taken since the Permanent Settlement have made them enemies of the tenantry. Now, Sir, we must remember that in the early days the zamindars used to look after the irrigation and make arrangements for embankments. The Government gave them a solemn declaration that the assessment which was then made would be the last work on the subject, but after that declaration the Government gave the people to understand that Government would relieve the raiyats and gave them any protection they needed. Almost a century after this Permanent Settlement the Government woke up for the purpose of giving this protection by levying cesses both from the raiyat as well as the zamindar. Was the solemn pledge that was given by Government with respect to the fixity of the assessment kept? It is all very

well to say that these cesses are not assessment on land. This is not Government revenue. Some people at the time of the Permanent Settlement gave out to the world that Government wanted to raise the assessment. At that time when this belief was spread by some of the people in various districts, Government sent out circulars that mischievous people had been telling these things that assessment would be increased and that such people ought to be prosecuted and sent to jail. Government did not mean to raise the assessment in any shape. Now, some of these people were, as a matter of fact, sent to jail. At the time when the cesses were levied, Government told the zamindars: "We are taking the cesses; you have not to pay the whole; you will realise the money and about half of that money we will give you as your profit for your realisation."

Mr. A. K. FAZL-UL HUQ: Sir, may I rise on a point of order, whether this subject refers to the amount of premium that has to be realised on transfers?

Mr. PRESIDENT: I think Mr. Fazl-ul Huq you are absolutely right, but then you must remember that this is a matter in which a certain amount of latitude has to be given. I am afraid, however, that Mr. Basu is drifting away from the matter under discussion.

Babu JITENDRALAL BANNERJEE: I hope, Sir, that from what you have said you will realise that we shall require also that latitude from your hands.

Mr. PRESIDENT: I quite anticipate that.

Mr. SARAT C. BASU: After these assessments, we have the income-tax which is levied on many of the zamindari collections under various pretexts (Question). There was no income-tax in those days but income-tax is now being levied. I will not protract by saying what Government has been doing since those days by increasing the assessment in some shape or other and under some pretext or other. But, Sir, you will be pleased to see that on the top of these assessments the zamindars have got to pay a huge amount in the matter of signing subscription books that are sent out by Government officials for the signature of the big magnates and that is not the least.

Mr. PRESIDENT: Mr. Basu, you are not to the point. I must ask you to be relevant.

Mr. SARAT C. BASU: Then, Mr. President, what is this right of the landlord? It is a right to property given to the zamindars at the time of the Permanent Settlement. The Government want to

take it away from the zamindars and give it to the raiyats. (Question.) Well, it may be a question, but the stubborn fact remains that up to now the right of selling occupancy rights has not been given to the tenants. The zamindars had a right to prevent the sale of occupancy right. Under Article 7 of the Permanent Settlement, the Government reserved to itself the power to enact measures for the protection and relief of the raiyats. Really, Mr. President, this is a good relief! The whole middle-class people are the raiyats of the country, and these people are going to be relieved of their ancestral properties by this provision. They stuck to their lands for centuries, and these lands give them their bread. They are going to be relieved of their bread by this measure. The question is not whether the salami should be 20 per cent. or 25 per cent., but the question is whether certain restrictions should or should not be put in the way of tenants selling away properties which they have been enjoying for so many centuries. If an unfettered power is given to the tenants to sell, the lands will go out of their hands at no very distant time, and the Government will find, say after a couple of years, that all these lands have gone away from the grihastha community and found their way to the banias, Marwaris, and others. So, really it is not a relief or a protection given to the raiyats, but it will be the veriest disaster that can possibly befall to the grihastha community.

Mr. President, I shall not be long, but I shall say one word. Some of my friends here say that 25 per cent. is too high a rate. But may I ask what has been the rate so long? I say that 25 per cent. has been the least amount that has been paid up till now. (Cries of "No, No.") I say this from my own experience. Most of these gentlemen, who are so loud in their protests, come from town: they know very little of the mufassal. I say from practical experience that in the case of transfer of occupancy right, 25 per cent. has been up till now the minimum salami paid to the landlord. I can give you lots of instances.

(At this stage the member having reached his time limit resumed his seat.)

Khan Bahadur Maulvi AZIZUL HAQUE: Mr. President, Sir, I had so long heard the reputation of my friend Mr. Sarat Chandra Basu of Burdwan as one of the ablest lawyers of the day, but I have had an ocular demonstration to-day. He has argued his case with no facts, he has argued his case with materials which probably he has not seen. He has argued so eloquently, so passionately—I may say so pathetically—that sometimes I am tempted to think that I am not in a Legislative Council but in a court of law, where sometimes the worst appears to be the best reasons. So much for Mr. Basu.

Sir, I come from a district which is more rural in character than the district to which my friend belongs, and I say as a matter of personal knowledge, having come in contact with all sorts of people, that so far as my district is concerned, it would be a grievous wrong to the people if 25 per cent. or anything near about that is imposed. Sir, a legislature, as I said the other day, can do anything it likes except making a man a woman and a woman a man. It cannot be denied that the legislature sometimes takes away the rights of some people and gives them to others who do not deserve them. But, Sir, what about the present situation in Bengal? Can the officers of the Government, who have personal knowledge of the real state of things in the country, who know the customs of the people, lay their hands on their bosom and say that so far as Bengal is concerned the majority of the people pay 25 per cent.? I submit that they do not. (A VOICE CRIES—60 per cent.) I accept the figure for the sake of argument and for the sake of argument alone, as regards three-fifths of the population. But in that case, are you not going to do a grievous wrong to the remaining two-fifths?

Sir, I am not going to say much so far as this discussion is concerned. But I think I should say for the delectation of my friend Mr. Sarat Chandra Basu that so far as the question of the proprietary right of landlords of Bengal is concerned, it is a legal myth, a historical myth, a fact which has no basis whatsoever. I cannot do anything better than quote the words of the Hon'ble Mr. Ilbert when he introduced the Bengal Tenancy Bill in 1885. In discussing the question whether the landlords of Bengal were the proprietors of the land or not he said:

". . . . It was said that at the time of the Permanent Settlement, and as part of the same arrangement, a formal declaration was made declaring the property in the soil to be vested in the zamindars; that throughout the Regulation of 1793, which confirmed and gave effect to the Permanent Settlement, the zamindars are described as the 'proprietors' or 'actual proprietors' of the land; and that this declaration and description are inconsistent with the notion of proprietary rights in the land being vested in any other class of persons. As to the use of the term 'proprietor' no serious argument can be based upon it.

"I have heard of the magic of property. But I have never understood that there was any such magic in the phrase 'proprietor' as to wipe out any rights qualifying those of the person to whom the phrase was applied: and it would be specially difficult to show that it had any such effect in the Regulation of 1793."

Mr. SARAT C. BASU: It is a fallacy of undistributed middle.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, my friend has forgotten logic altogether, and in his old days he remembers only the phrase "undistributed middle". . . . without remembering what it means or connotes. Sir, my friend has said that it is a fallacy of undistributed middle, but I hope to show that it is not so. The Hon'ble Mr. Ilbert continued:

". . . . If you were to ask an English lawyer what were the rights in the soil of a proprietor of land, he would probably tell you that you were using loose and popular language, and would beg you to make your meaning more precise and clear. In the next place the term was freely applied to the zamindars of Bengal and other persons of the same class in Regulations and other official documents of a date anterior to 1793, and therefore could not possibly be taken as indicating, or, to use a technical term, connoting, rights created at that date."

Sir Courtney Ilbert continues:—

"Here, for instance, is a definition of 'owner' taken from a recent English Act—the Public Health Act of 1875: 'Owner' means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used. . . . ."

In this case, the legislature has said:—

"We intend to impose certain sanitary duties on the owners of lands and houses. We will not inquire too closely which of several persons ought, as between themselves, perform those duties. It is sufficient for our purposes to find out who gets the rent;. . . ."

And after this he says that at the time when the Permanent Settlement was made there were three parties in the bargain—the landlord, the tenant, and the Government—and he said that so far as revenue was concerned, Government were not concerned with the question as to who were the actual tillers or proprietors of the soil.

He said: "We are treating you as the proprietors of the soil." I submit that the zamindars are proprietors only to the extent of paying the revenue and not to the extent of extinguishing the rights of the people, who are actually the tillers of the soil. And if you would look to the regulations of those days, you will find that wherever the Government have made any settlement with the people of this country, they have laid down the most rigorous terms possible to maintain and protect the rights of the people. I think the meaning of these words will be clear.

Sir, I will not dilate on this point further, lest I should reach the time-limit before I had dealt with the other points. So far as the question of percentage is concerned, it is the opinion of some of the

leading members of the Swarajist party that 25 per cent. is abnormally high. Sir, my friend, Babu Jogindra Chandra Chakravarti, who is leading the Swarajist group in this Council so far as this tenancy legislation is concerned—that hoary-headed gentleman for whose experience and mature judgment I have the greatest respect—was of the opinion that 10 per cent. should be substituted for 25 per cent. Sir, I would ask my friend what magic has transformed—has metamorphosed—him since that time. Sir, this is the argument he used previously: "There should be one method in calculating the landlord's fee and it should be calculated always upon the rental and not on the consideration-money or the value of the property. It is admitted that the law should not be changed in such a way as to lead to increase of litigation or to cause unnecessary hardship to the raiyats. From the point of view of the landlords, I may submit that if they get six times the rental as their fee in all cases of transfer, whether of entire holdings or portions thereof, without any trouble whatsoever, they will not be losers. .....25 per cent. of the consideration-money is such a high fee that I consider it unjustifiable for the legislature to sanction it."

Sir, I do not know whether I was reading out facts, as printed in the report of the Select Committee, because I find an entire transformation in my friend. Possibly, my friend will argue that if 25 per cent. is too high, perhaps 20 per cent. will do. That logic may convince my friend, but I do not know whether it will convince others.

Then, Sir, I shall quote the opinion of my friend, Babu Amulya Chandra Datta, Vakil of Hooghly. Sir, his opinion is stronger than that of Babu Jogindra Chandra Chakravarti. He said:

".....The merest accident of a transfer results in a windfall to the landlord and brings him a pocketful of money. Gain generally involves some sacrifice, but the position of the landlord is enviable in this respect."

I should say that the position of my friend is still more enviable to-day. He went on—

"The landlords are not entitled to any unearned increment, and on this principle they do not deserve any portion of the consideration-money, entailing the loss of a corresponding amount to the tenant. The position of the transferrer will manifestly become worse under the new conditions than under the present law. At present, he may transfer a portion of the holding without having to suffer any loss consequent on the payment of nazar to the landlords. So, in my opinion if any fee has to be paid to the landlord to placate him, it must in no case exceed 5 per cent. of the consideration-money or two years' rent at the outside." (Hear, hear.)

Sir, I might frankly admit that when I read the opinion of my friend, I thought that his logic was the best amongst the whole body of opinions, and so I gave notice of my amendment for fixing the salami at 5 per cent.

When I go a little deeper into the matter, I am tempted to ask what was the opinion of the Government members themselves. I would ask whether they have any conscience. Perhaps, their conscience is in the pockets of men whom I will not name. I say, that simply because they are anxious to have the Bill, to have nothing but the Bill, and the whole Bill, they have forgotten the tillers of the soil for whom they have been fighting so long. I may quote the opinion of the Director of Land Records, whose place is now occupied by Khan Bahadur M. A. Mumin. It is the fundamental convention of Government to continue the policy of his predecessor. I do not know whether the Khan Bahadur is continuing the policy of his predecessor. The Director of Land Records said:--

".....I am convinced that a salami of 25 per cent. is far too high.....12½ per cent. is higher than the average."

I ask the Hon'ble Member in charge of the Revenue Department whether he is prepared to rake up the body of opinions on the Bill for the sake of justice and fair play to find a figure which has been found by a body of persons who are responsible for District administration and carrying on the policy of Government. I see Mr. Blair here to-day and I ask him whether it is not his opinion that the rate of salami is too generous. Mr. Clayton, the then Commissioner of the Chittagong Division, said that the 25 per cent. was far too high. Mr. Drummond, now Secretary, was of opinion that the rate of salami of khas mahal was above all the neighbouring rates but they did not amount to 25 per cent. The judicial officers of Comilla were of opinion that the rate was not same but 25 per cent. could cause hardship in some parts of the district. It is not wise for the legislature to act upon arbitrary assumption and I see no reason why 25 per cent. should be fixed. In the Survey and Settlement Report of Bankura I find that the right of transfer in whole or in part was never seriously challenged or contested by landlords. Mr. M. C. Ghose, who is now the Legal Remembrancer and is a member of this House and whose legal opinion is binding on Government for the time being, when District Judge of Jessore, expressed the opinion that the rate should not exceed 12½ per cent. or 3 years' rent. Mr. Veitch was of opinion that it should not exceed 12 per cent. Mr. Fawcus of Khulna said that 25 per cent. was far above the normal rate and would cause hardship. Mr. Kemm says the premium of six times the rental value.....

(VOICES: Read Kemm's full statement.) Yes, I shall do it by and by. The Government Pleaders of Hooghly, Berhampore, Malda,

etc., are of opinion that 25 per cent. is far too high a rate. The Government Pleader of Rajshahi would make it 10 per cent. And I would draw special attention to the note of dissent of Messrs. Moberly, Birley, Thompson and Mumin. I ask whether these opinions have been destroyed by white ants? I ask whether these facts are still remembered? I ask in the name of those people who since 1793 have been looking upon Government as only people they can expect justice from? I ask whether it is just and equitable that this 25 per cent. should be enacted? I appeal to the Swarajists in this House. I have no complain to make against them. Their point of view may be different from mine. It is unfortunate that I cannot see eye to eye with them. There are among them persons for whom I have the highest possible regard. I appeal to them to say whether 25 per cent. is not too much, whether 20 per cent. even is not too much? Let us not forget that the people of the country mostly belong to the tenantry and if we are really to look to their interests, if we are true to the salt that we eat—if Mr. Basu, who gets enormous fees from them remembers them in this House—I ask in all solemnity is it not wise for us yet to retrace our steps and to go back to a figure that would not cause unnecessary hardship to them? If my friends had gone to the mufassal they would have seen that in some parts one bigha of land cannot be purchased for less then 2 or 3 hundred rupees and the cost of transfer every time will be 25 per cent. Is it not surprising to see that in modern economics annas four is cut out from every rupee that is paid? This is actually the position and I consider it is grievous wrong. I do not want to take up the time of the Council any more, but I should like to say.....

(Here the member having reached his time-limit resumed his seat).

Babu NALINIRANJAN SARKER: I rise to support the motion proposed to reduce the rate of transfer fees from 25 per cent. to 20 per cent. Sir, we have had enough of discussion in this House about the degree of ownership of the land, as between the zamindars and the tenants. It is no use raising the theoritical question of proprietorship. Even assuming the zamindars may or may not have been the absolute proprietors of the estates, and it is quite probable that the historians would differ on this matter, it is an admitted fact, as every member of this Council knows, that for the last century or more a class of people of this province have invested their hard-earned money in land tenures, relying on the existing law that they would get in return not only the annual rent but also such other customary fees or privileges as apertained to such tenures. This, they have done, with the connivance of the whole nation I say, with full knowledge that the mere rental by itself would be a very poor return on the capital invested. And I think I can state further without fear

of contradiction that even taking into account nazar made in addition to rent, the aggregate of these would be below the return usually obtainable from other investments. Nor is these payments, Sir, an illegal exaction on their part. They are paid and received according to a custom recognised by and even sanctioned by law. Since the year 1793, more than 90 per cent. of the estates in this Presidency have changed hands, and people have come forward to purchase them at an enormous premium of forty to sixty times the income from rent. This they have ventured to do with the clear and definite idea, derived from the sanction of the law behind it, that they would be able to gain adequate compensation by means of transfer fees, in addition to the rent roll. And to-day suddenly to destroy this expectation by legislative fiat would amount to the confiscation of a vested right. The result would be to hit hard a section of our countrymen by no means the most exacting, nor always belonging to the richer classes, while leaving untouched those who have invested their money in other ways. In these circumstances it is clear that a law which sought to combine land nationalisation with compensation for landlords would be fairer in conception than a policy of expropriating the landlords in the interest of a section of the community only.

Now, Sir, coming to the question of the rate of transfer fee I hope there will be no dissentient voice that the rate must be fixed and uniform. If the rate is not fixed it may vary from 10 per cent. to 200 per cent. with consequent hardship to the raiyats.

Regarding the actual rate, there is, no doubt, a divergency of opinion. But in most cases the 25 per cent. rate embodied in the Bill has been declared to be an approach to the average prevailing rate. Khan Bahadur Mumin, a prominent member now of the Treasury Bench and for all practical purposes the friend, philosopher and guide of the Hon'ble Revenue Member in the matter of this legislation, in his admirable report on the Settlement operations in the district of Jessore has admitted that "in most estates it is one-fourth of the consideration-money, but in some it is as high as cent. per cent. of the price of the land." And though he found in a few cases only the amount to be a nominal sum but as a whole, since the proposal for amending the Bengal Tenancy Act, "the tendency has been to realise 25 per cent." This is the case, Sir, in a district where the demand for land is very small on account of the gradual decrease of the population. The experience of Mr. Sachse, now the power behind the throne in this matter, and who has been appealed to by my friend Mr. Fazl-ul Huq as a great expert, as a settlement officer of my own district, is that the income of the landlords from the source of transfer fees varies between 50 per cent. and 75 per cent. of their income from rent proper. He has also experienced that the practice of charging salami from the heirs of occupancy raiyats is not

uncommon. And he has cited an instance in page 90 of his report of a well known landlord, who must remain nameless as he is a member of this House, charging salami from the heirs of the raiyats for each pakhi of land at different rates between sons, minor brothers major brothers and others, a son being charged Re. 1-4 as per pakhi, a minor brother at Rs. 12, a major brother Rs. 24 and other classes of heirs the full nazar as on a new settlement ranging from Rs. 20 to Rs. 200.

Let it not be thought, Sir, that I am citing this particular case in justification of the continuance of such a scandalous state of affairs. My object is only to emphasise the existing usage to establish the principle that the zamindar is entitled to a fair salami and that 20 per cent of the price is not too high when compared with rate now prevailing.

In the district of Rajshahi, the settlement report says, that 25 per cent. is the usual salami. In the district of Dacca salami varies from 25 to 33 per cent. of the purchase-money with an enhancement of 4 annas per rupee in rent, and in some cases 100 per cent. of the purchase-money has to be paid. In the district of Midnapore 25 per cent. of the purchase-money has been declared by Mr. Jameson in his settlement report as the commonest rate though it sometimes varies from 16 to 50 per cent. Mr. Hart, as Collector of the district of Burdwan, has given his opinion that 25 per cent. is the usual rate but in some cases the landlord tries to obtain more and often succeeds. Mr. G. S. Dutt, as Collector of Howrah, thought that 25 per cent. of the consideration money is not too high.

My friend, Khan Bahadur Azizul Haque, has just mentioned that in his own district, I mean the district of Nadia, the rate of 25 per cent. is unthinkable, but the settlement report says that many of the larger landlords realised more than 25 per cent., of the purchase-money, while some others tried to realise more.

Under these circumstances I think the rate, i.e., 20 per cent., which I advocate is certainly fair and is an equitable compromise and a via media between the two extremes.

There is another aspect of the question which has been brought into prominence by some members of the House as a point in favour of the reduction of the rate of transfer fee. They claim that when the part of a particular holding is disposed of by a tenant, the transferee can avoid payment of salami to the landlord because the landlord cannot eject a part transferee. I admit that when a portion of a holding is sold the transaction is very often withheld from the notice of the zamindar. But, Sir, avoidance or delay in payment, circumvention of the law cannot establish a right. But though a portion

transferee cannot be ejected he has to undergo the following risks unless recognised by the zamindar:—

(1) His name being not recorded in the landlord's sherista, the landlord will sue the original tenant, get a decree and can put up the jote for sale without the portion transferee knowing anything about it.

(2) If in rent sale mentioned above the jote is purchased by a third person, the transferee's rights are extinguished.

(3) If the original tenant after selling out a portion abandons the jote, the landlord may enter the tenancy and settle the lands with others and the portion transferee's right is thus extinguished.

To protect himself from all these risks the portion transferee approaches the landlord for mutation, and it becomes necessary for him that he does so. Especially in cases where an undefined share is sold the position of the transferee becomes precarious until and unless he gets himself recognised by the landlord for a specific share.

Thus under these conditions the new tenant must constantly be on the look out as to the ways of living of the old tenant. He must worry himself if the rent is being punctually and regularly paid to the landlord, as also if he is disposing of the rest of the holding or abandoning it altogether. This is a situation not in the least felicitous. And the payment of the full rate of transfer fee for this definite right is much more valuable to the ignorant tenants than dependence on this uncertainty by avoidance of payment of the salami.

It is also claimed by some members that the payment of transfer fee is only for mutation in the malik sherista and should not be much more than 2 per cent. But in the language of Mr. Sachse I say that "the salami could not be regarded as a fee for registration in the landlord's papers, but was a necessary consideration precedent to any legal transfer."

Even if it is assumed for the sake of argument that the average rate works out below 20 per cent., still I support this rate in view of the fact that under the proposed amending Bill many other valuable rights are being taken away from the zamindars, which considerably added to their incomes. The right to the trees, salami for granting permanent rights, erection of pucca buildings, digging of tanks, all these rights had their money equivalent and these are being taken away from them. Hitherto, further, when their consent and sanction have been necessary for the transfer of land, they have seen to it that the new purchaser should pay some higher rent. This increment they will no longer be able to introduce under the new system.

Moreover, another fact must not be disregarded. I perfectly agree with Mr. Gurner, Collector of Mymensingh, that "the whole scheme for validating transfer by payment of transfer fees is a step towards nationalisation of land with fixed payments to previous owners in compensation for proprietary rights." He has read the situation and coming events aright so far as the position of the future zamindars is concerned, except that it is for the present sectionalisation and not complete nationalisation that is being aimed at. Nevertheless this may be regarded as the thin end of the wedge which will make it much easier in future for any legislators to pave the way for a progressive expropriation of the landlords. That is one of the main reasons why I think that those who stand on the brink of such sacrifice should be duly compensated so far as may be at each step forward towards their ultimate extinction.

Before I close I want to make one other observation. There is an idea that all zamindars are rolling in wealth and encouraging as my friend has put it the "Rolls Royce industry and living in peace and plenty made possible by the sweat of the tenants" so they can afford to lose a substantial part of their income without any hardship, and the poor raiyat deserves some addition to his asset by transfer from those of the zamindars. But if we remember the fact that there are about 50 lakhs of tenureholders with an average annual income of about rupees twenty and who for the purpose of this Bill are as much zamindars as the big zamindars and will be affected adversely by substantial reduction of the rate, we shall be saved from such obsession. When in obedience to our democratic instinct we contemplate legislation against rajahs and maharajahs we should not forget that the same will apply with equal force against classes who are of us and with us and who have little in common with the wealthy aristocracy. The acquisition of landed property may be a mistake but it is certainly not a crime and you cannot penalise a whole class for the failings of a few.

With these few observations, I commend this to the House for acceptance. I am sure this rate of 20 per cent., which has been arrived at as a compromise, will be acceptable to the whole House, irrespective of the label of the parties or creeds.

The Hon'ble Sir PROVASH CHUNDER MITTER: At an earlier part of the debate I informed the House of the Government's attitude over this matter. I informed the members of the House that Government after careful consideration came to the decision that 25 per cent. was the right figure. At the same time I told the members of the House that if the majority of the important groups of the House agreed to a lower figure, I would perfectly be prepared to accept

that figure. (A VOICE: That you cannot do, as Government is keeping itself aloof from this matter.) Government's position is this: Government was well aware of the opinions which Khan Bahadur Maulvi Asizul Haque quoted with such commendable industry. Government were also in possession of the opinions and facts and after careful consideration came to the decision that the figure mentioned in the Bill was the proper figure. The question of fixing a definite percentage of salami was a question of the utmost difficulty. It varied from payment of almost no salami to payment of even cent. per cent. or in some cases even more. Considering the various opinions, considering the facts, and considering the reports of the Settlement Officers, my predecessors in office came to the decision that 25 per cent. was a fair figure. The Bankura tenant may suffer, but the Mymensing landlord will also suffer, and so on. That was the fair average. Therefore, it being my duty to pilot this Bill I am bound to stand by that figure. I have already informed the House that if I find that the different groups or the majority of the different groups agree to a lower per centage, then I would be quite willing to accept that decision. I now find, Sir, that the Muhammadan group will not have 25 per cent., they do not even want 20 per cent.; they want less. From their point of view therefore 20 per cent. ought to be better than 25 per cent. I find that the Swarajist group want 20 per cent.; I find the Eupopean group would prefer to have less than 20 per cent., but Mr. James has assured me that under the circumstances they would have no objection to 20 per cent.; I find the zamindars want 33 per cent.; but some important zamindar members have informed me that for the sake of peace they are willing to have 20 per cent. with pre-emption. Therefore leaving the Muhammadan group who want less than 20 per cent. but to whom 20 per cent. ought to be more acceptable than 25 per cent. the other important groups are willing to accept 20 per cent. So I am quite willing to accept that percentage.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: On a point of order, Sir. The fact is that our group never gave an assurance to the Hon'ble Member that they would agree to 20 per cent.; they want 25 per cent.

The Hon'ble Sir PROVASH CHUNDER MITTER: I did not say that the zamindars as a group gave me that assurance; but when I see that most of the groups are agreeable to 20 per cent. I am quite prepared to accept that. Therefore, Government will vote for amendment moved by Babu Romes Chandra Bagchi.

Maulvi KASIRUDDIN AHAMAD: I oppose the amendments fixing the salami at upwards of 10 per cent. The question of salami and pre-emption has been agitating the minds of the tenants for the

last few days. In some of the amendments the salami recommended is so very exhorbitant, so very unjust and so very unreasonable that I do not find language adequate enough to characterise them. In some of the amendments, especially moved by the zamindar members of this House, the salami is fixed at 33, 30 and 25 per cent. It shows that there is a general competition among the zamindars regarding the salami that the proposed Bill recommended for them. Sir, the lands belong to the tenants. It is the tenant who improves the land, manures it and irrigates it and does everything in fact for the improvement of the same. The zamindars have nothing to do with it. It escapes my imagination why a zamindar has been made a sharer of the value of the land. The provision for salami will reduce the value of the land and the tenant will get less than what otherwise they would have got. It will impoverish them and will bring about discontent and unrest among the tenants in Bengal. Sir, I warn the zamindar members of the House that their tenacity and obstinacy for so high a salami will contribute to their loss of reputation, loss of good feeling that may have hitherto existed between the zamindars and the tenants. With these few words I oppose the amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: If you think, Sir, that the question has been sufficiently discussed, may I request you to put the question?

Mr. BIJOY PRASAD SINGH ROY: On a point of order, Sir. Sir Provash Chunder Mitter made the statement that the zamindars had agreed to accept 20 per cent. I am afraid that is not the fact, and the opinion of one important group has been ignored.

Mr. PRESIDENT: Your statement will be duly recorded. The Hon'ble Member in charge of the Bill has requested me to put the question. I am satisfied that the matter has been sufficiently discussed and so I am going to comply with that request.

Maulvi ABUL KASEM: On a point of order, Sir. I see that a closure has been moved, and I submit that you should put the motion for closure to vote.

Mr. PRESIDENT: According to section 46, with regard to a Bill relating to a reserved subject, when the Hon'ble Member in charge of it makes that request the Chair has the right to comply with it without consulting the House.

Maulvi TAMIZUDDIN KHAN: I gave notice of an amendment in this connection which had been moved by Babu Amarendra Nath Ghose and I was not given any opportunity to speak.

Mr. PRESIDENT: The opportunity was yours when your amendment was moved, but you did not avail yourself of it.

Maulvi SYED NAUSHER ALI: I moved the amendment standing in my name. So far as this question is concerned, I was simply given to understand that I would be given an opportunity to speak later on; otherwise I would have spoken on it then and there.

Mr. PRESIDENT: I gave no such assurance to anybody.

Babu JITENDRALAL BANNERJEE: Are not the members who have given notice of amendments on this question entitled to speak?

Mr. PRESIDENT: It is not a question of being entitled to speak at this stage. They were entitled to speak when their amendments were moved but they did not do so.

Mr. A. K. FAZL-UL HUQ: May I, Sir, request you, when you are putting this momentous question to vote, not to rush through this matter and stifle discussion. The questions of salami and pre-emption should be decided once for all, and once they are decided, others will be plain sailing. I appeal to you, Sir, not to shut out discussion at this stage, because the Muhammadan members have not yet had the opportunity of discussing them.

Mr. PRESIDENT: It is far from my mind to stifle discussion, but I am convinced that no amount of speech-making would bring this matter to a close. Mr. James made an appeal and if that was not made in vain, there ought to have been, by now, some indications of a peaceful settlement. That having failed and having regard to the fact that so many members, particularly Muhammadan members, have spoken on the subject, I think I should agree with the Hon'ble Member in charge that it is time that the question should be put.

Mr. A. K. FAZL-UL HUQ: You have got indication of the amount of the percentage which the other side of the House agreed to accept. You have got an indication of the amount of the percentage which the Swarajist group have agreed to accept. But have you got any indication of the amount of the percentage which the Muhammadan group would agree to accept?

Mr. PRESIDENT: Yes, I have. I had the opportunity of inferring from the amendments, that are now before the House, as to what you really want. I had fair indications of that also from the Muhammadan speakers to whom I listened with close attention.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: We had a talk about 20 per cent. salami and we are willing to a compromise provided all parties agreed on 20 per cent. salami and pre-emption but since that has not been so I am afraid whether my party will now agree.

Mr. F. E. JAMES: I desire to offer an explanation. In view of the statement that has just been made by the Hon'ble Member in charge and in view of the fact that I had hoped three—I learn now two—important sections of the House are prepared to accept as a compromise, without necessarily changing their original opinions, the figure of 20 per cent., I make a submission to you that that motion might be put from the Chair first, the point being if that motion is carried, that disposes of all the other amendments on this question.

Mr. PRESIDENT: That is a very reasonable request, and I should be very glad to comply with it. Two courses are left open to me, either to put the most comprehensive motion first, or the one that has the approval of a large number of members of this House and in this case I will put amendment No. 355 first.

The motion that in clause 23, in proposed section 26D (*a*), line 4, for the words "twenty-five per cent." the words "twenty per cent." shall be substituted was then put and a division taken with the following result:—

AYES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Ramee Chandra.
Banerjee, Babu Prometha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Bose, Mr. S. C.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Dassolta, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Nafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Das Gupta, Dr. J. M.
[illegible]
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dowding, Mr. T. W.
Dutt, Babu Saral Kumar.
Eddis, Mr. A. McD.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. N.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hiralsingha, Babu Prabhu Dayal.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Hussain, the Hon'ble Nawab Musharruf, Khan Bahadur.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Lala, Babu Sareda Kripa.
Luke, Mr. H. R.
Maiti, Babu Mahendra Nath.
Martin, Mr. O. S.

Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Nem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Maharaja Jogindra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Ray, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarbadhikari, Dr. Sir Deva Prasad.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. N. E.
Thomas, Mr. N. W.
Wordsworth, Mr. W. C.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiquilah, Mr. Syed Md.
Bannerjea, Babu Jitendralal.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

The Ayes being 90 and the Noes 22, the motion was carried.

The motions standing in the names of Khan Bahadur Maulvi Azizul Haque, Maharaja Shashi Kanta Acharjya Chaudhuri, of Muktagacha, Mymensingh, Babu Sachindra Narayan Sanyal, Maulvi Asimuddin Ahamad, Babu Promotha Nath Banerjee and Maulvi Syed Nausher Ali, were not put as they were covered by the foregoing decision of the Council.

Adjournment.

The Council was then adjourned till 2-45 P.M. on Friday, the 24th August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Friday the 24th August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh), in the chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, Minister, and 110 nominated and elected members.

Starred Questions
(to which oral answers were given).

Orissa Coast Canal.

*72. **Babu MAHENDRA NATH MAITI:** (*a*) Will the Hon'ble Member in charge of the Irrigation Department be pleased to state whether it is a fact that the Government is preparing to abolish the Orissa Coast Canal? If so, why?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state when the canal is likely to be abolished?

MEMBER in charge of IRRIGATION DEPARTMENT (the Hon'ble Nawab Bahadur Saiyid Nawab Ali Chaudhuri, Khan Bahadur, of Dhanbari): (*a*) There is no proposal with Government to abolish the Orissa Coast Canal.

(*b*) Does not arise.

Irrigation of Burdwan district.

*73. **Mr. P. C. BASU.** (*a*) Has the attention of the Hon'ble Member in charge of the Irrigation Department been drawn to the scarcity of drinking water in the areas affected by distress and what action the Government intends to take in respect thereof?

(*b*) Is it a fact that the irrigation of the district has suffered considerably on account of—

(*i*) the Damodar Embankment;

(*ii*) the wretched condition of the old irrigation tanks and wells. If so, whether the Government contemplate restoring the old irrigation tanks and wells?

The Hon'ble Nawab Bahadur SAIYID NAWAB ALI CHAUDHURI, Khan Bahadur, of Dhanbari: (*a*) It is well known that in certain

areas there is a scarcity of drinking water at certain seasons. The tanks in some such areas are filled with water from the Irrigation Department channels.

(*b*) (*i*) No.

(*ii*) Certain irrigation tanks have been neglected, and are in bad condition, but the maintenance of such tanks lies with the owners and persons benefited. Government do not contemplate restoring old irrigation tanks and wells at present.

System of payment to extra copyists in the Registration offices in Calcutta and at Alipore.

***74. Maulvi LATAFAT HUSSAIN:** (*a*) Will the Hon'ble Minister in charge of the Education Department (Registration) be pleased to state whether it is a fact that as a result of the innovation replacing the fixed monthly rate system by the piece-rate system introduced in April, 1927, in the Registration Department in regard to the extra copyists of the sadar as well as mufassal Registration offices, the earnings of the Calcutta and Alipore extra copyists have come down to a great extent?

(*b*) Will the Hon'ble Minister be pleased to lay on the table a comparative statement of the earnings of five extra copyists of the Registration offices of Calcutta and Alipore with their names and designations in the year 1927-28 (April to March) and in the years 1925 and 1926, year by year?

(*c*) If the answer to (*a*) is in the affirmative, will the Hon'ble Minister be pleased to state whether the Government contemplate taking any steps in the matter?

(*d*) Will the Hon'ble Minister be pleased to lay on the table a statement showing with reasons the different rates of payment to—

(*i*) extra copyists of the Registration offices;

(*ii*) copyists of the Small Causes Court;

(*iii*) copyists of the Munsifs' Courts;

(*iv*) copyists of the Judges' Courts; and

(*v*) copyists of the different criminal courts of Bengal?

MINISTER in charge of EDUCATION DEPARTMENT (the Hon'ble Nawab Musharruf Hosain, Khan Bahadur): (*a*) It is not a fact that the earnings of the Calcutta and Alipore extra copyists have come down to a great extent as a result of the replacement of the fixed monthly rate system by the piece-rate system introduced in April, 1927. The earnings in the Calcutta office have been slightly reduced, but those for the Alipore office show a slight increase.

(*b*) A comparative statement of the earnings of five extra copyists of the Registration offices for the financial years 1925-26, 1926-27 and 1927-28 is laid on the table.

(*c*) Government do not contemplate taking any action in the matter at present.

(*d*) A statement showing the different rates of payment to copyists of different offices is laid on the table. The reasons for the difference in the rates of remuneration to extra copyists of the Registration offices lies on the fact that the system in Registration offices is substantially different from that in other Government offices where certified copies are issued to parties and a fee proportionate to the remuneration allowed to the copyists is realised from the parties. In Registration offices extra muharrirs are mainly employed for copying documents accepted for registration on the register books and are paid for for doing that work while no charge is levied from parties if the copy does not cover more than two pages of the register book.

Comparative statement of the earnings of 5 extra copyists of the Calcutta and Alipore Registration offices for the years 1925-26, 1926-27 and 1927-28, referred to in the reply to clause (b) of starred question No. 74.

No.	Names.	Designation.	Year.	Total.
	CALCUTTA.			RS. A.
1	Sasi Bhusan Bose ..	Extra copyists ..	1925-26	266 5
			1926-27	200 0
			1927-28	189 4
2	Surendra Nath Mullik ..	Extra copyists ..	1925-26	280 8
			1926-27	303 10
			1927-28	288 10
3	Durga Pada Chakravarty ..	Extra copyists ..	1925-26	290 13
			1926-27	230 0
			1927-28	202 2
4	Janoky Nath Chakravarty ..	Extra copyists ..	1925-26	291 6
			1926-27	272 2
			1927-28	267 11
5	Satish Chandra Ghosal ..	Extra copyists ..	1925-26	246 11
			1926-27	262 13
			1927-28	247 8
	ALIPORE.			
1	Karuna Kanta Sarkar ..	Extra copyists ..	1925-26	290 14
			1926-27	284 6
			1927-28	302 15
2	Charu Bhusan Sarkar ..	Extra copyists ..	1925-26	275 15
			1926-27	244 0
			1927-28	258 12
3	Rasamay Sarkar	Extra copyists ..	1925-26	257 6
			1926-27	222 15
			1927-28	258 11
4	Md. Abu Syeed	Extra copyists ..	1925-26	264 1
			1926-27	227 1
			1927-28	312 4
5	Sachinanda Das	Extra copyists ..	1925-26	266 13
			1926-27	242 1
			1927-28	256 9

Statement showing the different rates of remuneration to copyists of Registration offices, copyists of the Calcutta Small Causes Court, Munsifs' Courts, Judges' Courts and criminal courts of Bengal, referred to in the reply to clause (d) of starred question No. 74.

(*i*) *Extra copyists of the Registration offices.*—Re. 1-4 per 3,000 words in the Calcutta Registration office and Re. 1 per 3,000 words in all other Registration offices with effect from 1st April, 1927. Re. 1 per 3,000 words at Darjeeling with effect from the 1st January, 1928.

(*ii*) *Copyists of the Small Causes Court.*—As this is not a court of record, no extra copyists or typists are maintained in this court, but copies of documents, etc., are supplied by clerks and typists of this court who are paid from the establishment. Copies of documents are furnished on payment of Re. 1 in court-fee stamp. In case of proceedings and written statement of suits of the value of Rs. 500 or less, Re. 1-8 is charged for both.

(*iii*) *Copyists of the Munsifs' Courts and* (*iv*) *Copyists of the Judges' Courts.*—In all civil courts, typists and copyists are paid at the rate of annas 2 per folio, each folio containing 150 words if in English or 300 words, if in Bengali, four letters generally counting as one word.

(*v*) *Copyists of the different criminal courts of Bengal.*—One half of the charge of four annas per folio levied by means of the impressed and adhesive stamp represents the earnings of the copyists or typists whose accounts are made up monthly and the amount due to each paid out of contingencies.

Drainage of a portion of Raina thana in Burdwan.

***75. Babu MAHENDRA NATH MAITI:** (*a*) Is the Hon'ble Member in charge of the Irrigation Department aware that some big and prosperous villages of the Raina thana in the Burdwan district are yearly suffering from loss of crop for heavy pressure of water due to the construction of the Bankura-Damodar Railway line which runs direct across the natural drainage slope of the country?

(*b*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of drawing the attention of the Bankura-Damodar Railway authorities to this matter?

The Hon'ble Nawab Bahadur SAIYID NAWAB ALI CHAUDHURI, Khan Bahadur, of Dhanbari: (*a*) No.

(*b*) Does not arise.

Babu PROMOTHA NATH BANERJEE: Will the Hon'ble Member be pleased to state the source of his information?

The Hon'ble Nawab Bahadur SAIYID NAWAB ALI CHAUDHURI, Khan Bahadur, of Dhanbari: Local officers.

Babu PROMOTHA NATH BANERJEE: May I know if there is any reason to think the information to be false?

The Hon'ble Nawab Bahadur SAIYID NAWAB ALI CHAUDHURI, Khan Bahadur, of Dhanbari: There is no reason to suspect that the information is false.

Unstarred Questions

(answers to which were laid on the table).

Gobra Nala.

60. Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: (*a*) Will the Hon'ble Member in charge of the Irrigation Department be pleased to lay on the table the progress report of *Gobra Nala* Canal work in the district of Murshidabad?

(*b*) When is the work likely to be completed?

The Hon'ble Nawab Bahadur SAIYID NAWAB ALI CHAUDHURI, Khan Bahadur, of Dhanbari: (*a*) The report is laid on the table.

(*b*) The work is expected to be completed by 1st June, 1929.

Progress Report of the Gobra Nala Scheme.

Earthwork excavation referred to in the reply to clause (a) of unstarred question No. 60.

(1) Channel from chainage 0 to 8,600, 94 per cent. done.

(2) Channel from chainage 8,600 to Bhalko Bhil. 99 per cent. done.

(3) Channel from the Bhalko Bhil to Gobra Nala completed, except for road crossings.

Head regulator completed, except for shutters, gearing for shutters,

Regulator in chainage 8,600. Pitching and road diversion only remain.

Tailweir block pitching in the bed and on the sides remain to be done.

Screw pile bridges. Half the work is completed.

Arbitration Boards.

61. Mr. S. C. BOSE: (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to state whether the Syndicate of the University of Calcutta recently passed any decision regarding the exclusion or inclusion of aided schools from the operation of the Arbitration Boards as provided in the School Code?

(*b*) If so, will the Hon'ble Minister be pleased to state—

(*i*) when that decision was passed; and

(*ii*) what that decision is?

(*c*) Will the Hon'ble Minister be pleased to state by whom the proposal for setting up of Arbitration Boards was first made?

(*d*) Is it a fact that the proposal for setting up of Arbitration Boards was communicated by the Director of Public Instruction to the Secretary, All-Bengal Teachers' Association?

(*e*) If so, when was the communication made?

(*f*) Is it a fact that Mr. Oaten (the late Director of Public Instruction) and Mr. Stapleton (the present Director of Public Instruction) were members of the sub-committee appointed by the Syndicate of the University of Calcutta to prepare a draft of the School Code?

(*g*) Did the said sub-committee submit any report to the Syndicate?

(*h*) If so, who were the signatories to the said report?

(*i*) Will the Hon'ble Minister be pleased to lay on the table a copy of that report?

(*j*) Will the Hon'ble Minister be pleased to state whether the School Code as finally passed by the Syndicate was meant for aided or unaided schools or for both?

(*k*) Will the Hon'ble Minister be pleased to state—

(*i*) whether the Government want to exclude the aided schools from the operation of Arbitration Boards;

(*ii*) whether they want to leave it to the option of a teacher in an aided school to appeal against arbitrary discharge or dismissal either to the Education Department or the Arbitration Board?

(*l*) Were any letters written by the Government to the University of Calcutta in or about May, 1927?

(*m*) If so, what opinion did the Government express in those letters regarding Arbitration Boards?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: (*a*) and (*b*) Government have not received any communication from the University on the subject.

(*c*) As far as can be ascertained, it was first placed before the Director of Public Instruction by the All-Bengal Non-Government Teachers' Association in December, 1924; but a Government Tribunal to deal with cases of unfair dismissal and breach of contract in school had been previously suggested by the Sadler Commission—*vide* paragraphs 91-92 at pages 83-84 of Chapter XXX, Vol. IV of their Report.

(*d*) and (*e*) The Director of Public Instruction conveyed the suggestion to the University recommending the creation of an Arbitration Board on the lines recommended by the Sadler Commission, and this fact was communicated to the Secretary, All-Bengal Non-Government Teachers' Association, on the 17th February, 1925.

(*f*) Yes, in their capacity as members of the Syndicate.

(*g*), (*h*) and (*i*) Government have no information which they can supply. The report is not a Government report or a report to Government.

(*j*) The Code was not issued by Government. It may apply to both aided and non-aided schools.

(*k*) (*i*) (*ii*), (*l*) and (*m*) These matters are under correspondence with the University and Government are not prepared to make any statement at present while correspondence is pending.

Deprovincialisation of high schools.

62. Babu HEM CHANDRA NASKER: (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to state whether it is a fact that the Government propose to provincialise certain high schools in the province?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Minister be pleased to state the names of such schools?

(*c*) Is it a fact that during the time of His Excellency Lord Lytton as a result of the recommendation of the Bengal Retrenchment Committee and in reply to a petition submitted by thousands of teachers of private schools, Government agreed not to provincialise any more high schools and gradually to deprovincialise the existing ones?

(*d*) Is it a fact that His Excellency Lord Lytton in reply to an address presented by the people of Jalpaiguri publicly announced the above policy?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: (*a*) No.

(*b*) Does not arise.

(*c*) and (*d*) Government decided in 1924 not to provincialise any more institutions and to prepare the way gradually for the deprovincialisation of those for which Government is wholly responsible. Progress in carrying out this policy awaits a decision on the policy in regard to the whole of secondary education in the province.

The decision in 1924 was announced by His Excellency Lord Lytton at Jalpaiguri.

Government Provident Fund Scheme in schools.

63. Babu HEM CHANDRA NASKER: (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to state whether it is a fact that all the aided high schools in the Burdwan Division are being compelled to accept the Government Provident Fund Scheme?

(*b*) Is the Hon'ble Minister aware that the managers of private schools find it inconvenient to accept some of the rules?

(*c*) Has it been ascertained that the fund budgetted for the purpose is sufficient for allotting it to all the high schools in the province willing to participate in the Scheme?

(*d*) If the fund has been found to be inadequate, are the Government proposing to provide additional grant for the purpose in the next budget?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: (*a*) Aided schools already in receipt of grant from the ordinary grant-in-aid provision, which enables them to maintain their existing Provident Fund, are being called upon to merge their fund in the Government Provident Fund Scheme, as is required by the rules on the subject.

(*b*) Government have not received any such complaints.

(*c*) and (*d*) Government are aware that the existing provision is inadequate. Further allotments will be made when funds permit.

GOVERNMENT BILL.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

The following motions were called but not moved:—

Babu PROMOTHA NATH BANERJEE to move that in clause (*a*) of the proposed section 26D, for the words "twenty-five per cent.," the words "twelve per cent." be substituted, and after the words "in the instrument of transfer," the words "where it is the custom to pay" be inserted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, to move that in clause 23, in section 26, for the words twenty-five per cent." and "six times" wherever they occur, the words "thirty per cent." and "eight times" be substituted.

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in clause 23, in proposed section 26D, the words "as set forth in the instrument of transfer," wherever they occur, shall be omitted.

Babu SACHINDRA NARAYAN SANYAL to move that in section 26D (*a*), after the words "the instrument of transfer," the following shall be added:—

> "or to eight times the annual rent of the holding or of the portion or share transferred, whichever is greater."

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move formally that in clause 23, in the proposed section 26D, the word "two" be substituted for the word "six" wherever it occurs.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): I also formally oppose it.

The motion was put and lost.

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Maulvi Nurul Huq Chaudhuri may I have your permission, Sir, to move the amendment standing in his name?

Mr. PRESIDENT: Yes.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in section 26D in clause (*b*) the words "or a portion or a share of a holding" and the words "or of the portion of share" be omitted.

My reason is nothing more than this: keep the law exactly as it stands now. Under the present law even those who advocate a salami of 25 per cent. will admit that if a tenant transfers fifteen annas of his holding instead of sixteen annas he has not to pay any salami whatsoever. I do not see any reason why that right should be infringed and a statutory provision made for the payment of a salami in such cases. Therefore I move that the words "or a portion or share of a holding" be deleted.

Mr. JOGESH CHANDRA GUPTA: I would just like to point out to the House that my friend has not correctly stated the exact position with regard to the transfer of a portion or share of a holding. It is a fact that if one wants to avoid payment of the salami he can, but as a matter of fact if there is a bona fide transfer of a portion or a share of the holding and if he wants recognition from the landlord when he takes that recognition, he does pay salami. Therefore it would not be correct to say that when there is a transfer of a portion or a share of the holding, no salami is paid at present.

Mr. F. A. SACHSE: I tried to explain the position as regards this very point yesterday. If partial transfers are to be excluded from the provisions of section 26D, the result will be that there will be no transfers of whole holdings. In every single case a transferrer will keep a very tiny portion of the land in his own name and the landlord will be helpless and all the provisions that we have made will be a dead letter.

Khan Bahadur Maulvi EKRAMUL HUQ: It has been admitted by Mr. Sachse that if this section is not introduced in the Bill the tenants may evade the payment of pre-emption, and this was actually the case in former days. On the other hand it has been pointed out by my friends of the Swaraj Party that the tenants did actually get recognition from the landlords for the part-transfers that were made on payment of premium though it is a fact that in ninety-nine cases out of a hundred it is otherwise. I know many instances in which there were 8 or 10 part-transfers that all stood good because a portion was kept by the tenant and under the old law the zamindars did not get a single pice for the part-transfers that were made; by the introduction of this particular section in this Bill we make it compulsory for every part-transfer to be registered and you make it compulsory for the transferee to pay the amount which he was not at all bound

to pay. By enacting this measure you are compelling the masses to pay more than ten times over than what they used to pay before, and that is what we object to. We appealed to you to show some sympathy to these poor cultivators but you are refusing to do so. I again repeat that you are going to give the landlords ten times over than what they used to get even under the law as it stands at present. But will this House hear our appeal on behalf of the dumb millions of the country?

Maulvi SYED NAUSHER ALI: I take this opportunity to express my opinion on this matter as I was not allowed to do so yesterday and on other previous occasions. It has been stated by Mr. Sachse, if I remember aright, that when a portion or share of a holding was transferred, previous to the passing of this law, there was no necessity of paying anything to the landlord. But if the amending Bill be passed as it is it makes no exception whatsoever in favour of a portion or share of a holding. The effect of that will be, as has been pointed out by Khan Bahadur Ekramul Huq, the landlords will get much more money than they used to get in the past. Yesterday we agreed to make the salami or landlord's fee as 20 per cent. of the purchase money, although it was stated by the Government that 25 per cent. was the average. I have no doubt that the calculation of that average was based upon the amount that used to be paid to the landlord for the transfer of whole holdings and that that was a fact which has been admitted by Mr. Sachse. If the landlords have already got what they used to get in the past there is no reason whatsoever why the transferrer of a part or a share of a holding should be saddled with the additional tax. I have tried to get at the principles underlying this landlord's fee. It has been stated that we ought not to take away existing rights and that plea has been put forward by members who represent the tenants and the landlords. That is an admitted fact and I rely upon that principle itself and ask as to why you are going to impose upon the transferrers of a share or portion of a holding a tax which they had not to pay before.

It has been further stated that we are trying to codify a custom into law—that has been proposed from the Government side. If that be so then why deviate from the principle in the case of a transferrer of a part-holding and compel him to pay the landlord's fee. It is useless to dilate upon this point any more, the fact is clear to all and I leave it to the conscience of the whole House—I certainly believe that the House has got a conscience—to decide the question according to its own conscience. Of course our experience in the past makes it difficult for us to believe that the majority in this House will agree to work according to its conscience. But I believe

that in view of the principle enunciated by Government the principle enunciated by the landlord's party or by the Swarajist Party, it will be accepted by all that the transferrer of a part or share of a holding should not be compelled to pay this 20 per cent. as landlord's fee which he had not to pay in the past.

One small matter in this connection I wish to bring to the notice of the House. Khan Bahadur Azizul Haque pointed out yesterday that there was certainly no good ground why so much money should go to the pockets of the landlords. I do not wish to elaborate that point further here, but I wish to say that the zamindars should not be so avaricious as to take advantage of the adversity of the tenants to make money out of it. I ask the zamindars not to take advantage of the adversity of those very tenants for whom they profess to have the greatest possible sympathy and to make their adversity an occasion of their prosperity.

One more point. It has been said that none here want to give anything to the landlord which he was not used to get in the past and that none want to give any additional protection to the landlord. It has also been said that under this amending Bill itself protection is sought to be given to the tenants. If that be so, I can only expect that this House will not take away the right which the tenants have already got; I am not asking for any privilege or right which the tenants had not before. With these remarks I support the amendment.

Babu JITENDRALAL BANNERJEE: The question raised by this amendment is the old question—Whom does the Government seek to benefit by the present piece of legislation? The Government makes a great parade of its generosity and says: "The law at present is inchoate. Under the law the tenant has no right of transfer. We are going to give him the right of transferability: Only we wish to clap upon him an additional fine of 20 per cent.—nothing more than that! When the tenant expects to get one rupee, we are going to give him just twelve annas six pies!" This is the measure of the Government's generosity: they are going to help the tenant whether he wants that help or not! Now, what is the present position of a tenant who wants to dispose of a portion of his holding? At present under the wise dispensation of the High Court, he can comfortably get round the law and evade the payment of any salami whatever. But the Government says, "No, we shall cure the iniquities of the High Court; we shall saddle the tenant with a burden of which the High Court may want to relieve him." Sir, as the Bill has been modified, it is the most unwanted piece of legislation one can conceive of. It is not wanted by the tenants, they would not touch it with a pair of tongs; it is not wanted by the zamindars; and it is not wanted by the Swarajya Party. But who then is it wanted by? It

is wanted only by the Government, who, in the excess of their altruistic generosity, are determined to cram it down our throats, whether we would have it or no. But I should like to tell this to the Government, "Take back your gift—we have had enough of your generosity."

Khan Bahadur Maulvi AZIZUL HAQUE: In view of the reply of Mr. Sachse will the Government be pleased to state what it will do if a tenant instead of transferring sixteen annas of his holding transfers only fifteen annas to avoid salami?

The Hon'ble Sir PROVASH CHUNDER MITTER: That information has already been given by Mr. Sachse. It is an accepted position that part-transfer is not allowed by law but takes place by evasion of law. (A VOICE: Even with the sanction of the Court.) I will remind the House of the history of this legislation. It is because of this evasion and because of the uncertainty of law that in 1912 the High Court requested the Government to take up this legislation. I do not want to go into a detailed examination of the question because this matter was fully discussed yesterday. One object of this legislation is to settle the law; what is now done by evasion of law will under this legislation be done under the authority of law. This argument about the percentage of salami is not relevant to-day to the question which we are discussing just now. Part-transfers take place in fact by evasion of law. (Question, question.) That being so, the price fetched must therefore be less. If the raiyat can transfer a part or whole of his holding, a right conferred upon him by law, the price fetched is likely to be more. The real reason for the change is that the High Court asked the Government to settle the law and that is why on the advice of various committees, in which the tenants were well represented we are proposing to settle the law. The question has been fully discussed and I do not want to enter further into the matter. I oppose the amendment.

Babu SURENDRA NATH RAY: I shall say only a few words. We all know that the question of the payment of salami was settled practically yesterday but I see that the question is again being discussed to-day. It is a well-known fact and well-known to every lawyer who deals with old documents that in leases between the landlord and the tenant the following words are put down: Landlords will be entitled to a chouth, that is, one-fourth of the amount. That is the settled law of the country and that is the custom.

Mr. PRESIDENT: We are not discussing that now.

Babu SURENDRA NATH RAY: The question has been settled yesterday and I do not see any reason why it should be revived to-day also.

Mr. PRESIDENT: Those remarks were loosely made and you need not take notice of them. Have you anything new to say on the amendment?

Babu SURENDRA NATH RAY: No, I was simply drawing your attention to that.

3-15 p.m.

The motion that in section 26D, in clause (*b*), the words "or a portion or share of a holding" and the words "or of the portion or share" shall be omitted was then put and a division taken, with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Bannerjee, Babu Jitendralal.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Kerim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shameur.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Promotha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Casselis, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakrabortty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Sr. Kumud Sankar.

Roy, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Saghee, Mr. F. A.
Sarker, Babu Nalinirenjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

The Ayes being 19 and the Noes 63, the motion was lost.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 387-393, 395 and 400-402.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 23, in the proposed section 26D, for clause (*b*) the following shall be substituted, namely:—

"(*b*) in the case of the sale of a holding or a portion or share of a holding, in respect of which a money rent is payable to three times of the annual rent of the holding or of the portion or share transferred."

Now, Sir, we are dealing with the most important part of section 26D. We are going to decide what the landlord's fee should be in the case of the sale of an occupancy holding in respect of which a money-rent is payable. Our decision yesterday was with respect to the sale of holdings subject to the payment of produce-rents, whether in full or in part. Everyone knows that holdings in respect of which produce-rents are payable are seldom transferred. Under the new law—thanks to the success of the Congress cum Government campaign against that helpless class of peasants, the bargadars—the number of holdings in respect of which produce-rents are payable will be much less under the new regime than at present, and the transfers of such holdings will be necessarily fewer than what they are now. Our decision of yesterday to pay 20 per cent. of the sale money of such holdings to the landlords as transfer fees will therefore affect an infinitesimal number of agriculturists; and in this view, yesterday's decision may be taken as a very unimportant one. But to-day we are face to face with a momentous issue affecting ninety-nine per cent., if not more, of the occupancy raiyats of this province. May I therefore hope that we may forget all the bitterness and rancour of the last few days, and all the arbitrariness and high-handedness that some of us have hitherto been guilty of, and approach the solution of this grave issue with the dispassionate reasonableness that the occasion demands.

Sir, I have profited by the sad experience of yesterday and knowing as I do the mood of the majority of this House I feel reluctant to advance any argument with a view to induce that majority to agree to a proposal of "no premium to the landlord," although I still maintain that in justice and equity the landlord is not entitled to

make any profit out of the transactions of his raiyats. The only question I like to deal with is: What should be the basis and the extent of the landlord's fee? Should it be a percentage of the sale-price or a multiple of the annual rent? I would recommend to the House "a multiple of the annual rent" in preference to a percentage of the sale-price. If the House agree to this it will give the landlord all that he wants, it will give him his "pound of flesh" and what is more it will give him an advantage which he cannot ignore if he is sincere in his motives. If you fix the landlord's fee upon the rent basis it will enable you to do away with the most odious provision in the Bill, viz.: the provision for pre-emption, because in that case even the few flimsy arguments that one might adduce in favour of that obnoxious provision will have vanished. The strongest argument in favour of pre-emption is that unless there is such a provision raiyats would cheat the landlords out of the proper share of the transfer fees by understating the sale-price in the instruments of sale. But if you accept the rent basis in fixing the landlord's fee all such apprehensions will be out of place, because the amount of rent cannot be understated and the man who knows best what the amount of annual rent is, is the landlord.

Another argument in favour of pre-emption will be that it will exercise a salutary check upon the transfer of occupancy holdings to non-agriculturists like Marwaris, speculators and money-lenders as Mr. Bose put it yesterday. The less is said about this salutary check the better for all concerned. Sales of occupancy holdings are daily going on even now and a large percentage of the transferees come from those very non-agriculturists and classes mentioned above. Has anyone ever heard that any landlord in Bengal has ever prevented such a transfer by an exercise of his prerogative under the present law? The truth rather lies in the reverse of this. A poor raiyat-purchaser is very often ejected because he is too poor to appease the landlord's hunger whereas the money-lender can and does invariably supply what alone the landlord cares for. Why should we presume that under the magic touch of the new law the landlord will be transformed into an angel and do what he has never been found to do till now?

Babu SURENDRA NATH BISWAS: Sir, I rise on a point of order. Are we discussing the question of pre-emption now?

Mr. PRESIDENT: Mr. Biswas, the mover is all right.

Maulvi TAMIZUDDIN KHAN: The other argument in favour of pre-emption that it will enable poor helpless landlords to avoid undesirables is based on nothing but imagination and sentiment and I think it is not too much to expect that the landlord will be prepared to make a little sacrifice of his sentiment for the sake of his country's good.

It follows from what I have already said that if you accept the rent basis in fixing the landlords' fee, it will enable you to avoid the provision for pre-emption and it will make the new law generally acceptable to the country in spite of its many defects and in spite of its general pro-landlord, and anti-raiyat tendency.

If the House accepts the principle of the rent basis it is for the Swaraj Party and the Government to decide the extent of the fee, because the key to the position lies with them. We outsiders can only make certain suggestions. My present amendment speaks of three times the annual rent. That seems to me to be quite fair and equitable. But if the Government and the Congress Party fix upon a higher multiple we shall, though unwillingly, submit, simply because it will give the House an opportunity of avoiding pre-emption. The Government proposal is "six times the annual rent" which they consider to be an approximate equivalent of 25 per cent. of the purchase money. The Congress Party's proposal is as we find from amendment No. 407 in the name of Babu Romesh Chandra Bagchi, yesterday's champion, "five times the annual rent" which he seems to consider equivalent to "twenty per cent." of the purchase money—his alternative proposal. As the Government and the Congress Party have come to a compromise of 20 per cent. they should be prepared to accept the alternative of five times the annual rent. You may very well fix upon that or even the maximum proposed by Government, i.e., six times the annual rent, but my earnest appeal to the Government and the Congress Party is "for the sake of the country's good, for the sake of your own future, avoid the principle of a percentage of the sale-price, so that you may also avoid the vicious provision of pre-emption made in the Bill." If you do not agree to this eminently reasonable proposal which safeguards everything that the landlord demands it will only show that in sticking to the provision of pre-emption you have other ulterior motives than you profess.

3-30 p.m.

One word more to the hon'ble landlord members of this House and I have finished. Socially, educationally and economically they hold a unique position in this country. Should they be a party to a thing that may jeopardise that position? They have already scored a number of capital advantages in this legislation and many more are in store for them. So far as this particular matter of transfer fees is concerned they had hitherto been exacting it more or less as a compulsory gratification paid by transferees of entire occupancy holdings to induce them to refrain from having resort to the course of evicting the transferee—a course of questionable equity. There was no explicit legal sanction to these payments. The transferee had to buy up the landlord on pain of eviction. This new legislation has legalised these perquisites for the landlords. Again the landlords had

hitherto been prevented, in most cases, from realising these fees owing to the widespread practice of part-transfers resorted to by the raiyats. Henceforth not a single transfer even of the minutest portion of an occupancy holding is to escape the payment of the landlord's fee. This itself will increase the amount of transfer fees realised in this province at least threefold. Furthermore, hitherto the transferee might take shelter under the custom where it exists of no transfer fees being payable to the landlords. Henceforth that door will forever be shut against the raiyat or his transferee. With all these capital advantages secured to the landlord in this one instance alone can he not be generous enough to forego his claim to the odious instrument of oppression, the provision for pre-emption, forged for his apparent benefit, but really for his ultimate ruin, by a pliant and short-sighted Government, and can he not be satisfied with a premium as large as fivefold or sixfold of the annual rent and not insist upon a percentage of the sale-price, so that he may incur no risk from his expected abjuration of the premium?

Let no one conjure up imaginary difficulties. Let no one say because we have accepted the principle of a percentage of the sale-price in fixing the transfer fees payable in the case of holdings subject to produce rents we should follow the same principle here too for the sake of uniformity. I have already shown that the decision regarding those holdings will affect only a negligible number of men. The landlords can without any reasonable apprehension give up their claim of pre-emption so far as this small class of produce-rent-paying occupancy raiyats are concerned. If not, we have no objection to the landlords enjoying the right of pre-emption in respect of holdings of that class, because such holdings are seldom transferred and they will soon disappear from the land.

If the Congress Party, the Government and the landlords be good enough to accept my humble suggestion they will do an act of broad-minded statesmanship that will redound to their credit for all time to come.

The following amendment was called but not moved:—

Maulvi TAMIZUDDIN KHAN to move that in clause 23, in proposed section 26D, for clause (*b*), the following shall be substituted, namely:—

"(*b*) in the case of the sale of a holding or a portion or a share of a holding in respect of which a money rent is payable, to five per cent. of the consideration money as set forth in the instrument of transfer, or to three times the annual rent of the holding or of the portion or share transferred whichever is greater."

Maulvi TAMIZUDDIN KHAN: Sir, I formally beg to move that clause 23, in proposed section 26D, for clause (*b*), the following shall be substituted, namely:—

"(*b*) in the case of the sale of a holding or a portion or share of a holding, in respect of which money-rent is payable, to five times the annual rent of the holding or of the portion or share transferred."

This amendment speaks of five times the annual rent, whereas the amendment which I have just now moved speaks of three times the annual rent only.

Sir, I beg formally to move, that in clause 23, in proposed section 26D, for clause (*b*), the following shall be substituted, namely:—

"(*b*) in the case of the sale of a holding or a portion or share of a holding, in respect of which a money rent is payable to ten per cent. of the consideration money as set forth in the instrument of transfer or to five times the annual rent of the holding or of the portion or share transferred, whichever is greater."

The following amendments were called but not moved:—

Maulvi TAMIZUDDIN KHAN to move that in clause 23, in proposed section 26D, for clause (*b*), the following shall be substituted, namely:—

"(*b*) in the case of the sale of a holding or a portion or share of a holding, in respect of which a money rent is payable to ten per cent. of the consideration money as set forth in the instrument of transfer."

Maulvi TAMIZUDDIN KHAN to move that in clause 23, in proposed section 26D, for clause (*b*), the following shall be substituted, namely:—

"(*b*) in the case of the sale of a holding or a portion or share of a holding, in respect of which a money rent is payable to five times the annual rent of the holding or of the portion or share transferred."

Maulvi TAMIZUDDIN KHAN: Sir, I beg formally to move that in clause 23, in proposed section 26D, for clause (*b*), the following shall be substituted, namely:—

"(*b*) in the case of the sale of a holding or a portion or share of a holding, in respect of which a money rent is payable to six times the annual rent of the holding or of the portion or share transferred."

This amendment speaks of six times the annual rent, which, I understand, is also the proposal of the Government.

Maulvi KASIRUDDIN AHAMAD: Sir, I beg to move that in clause 23, in the proposed section 26D (*b*)—

(*i*) in lines 3 to 5, for the words "to twenty-five per cent. of the consideration money as set forth in the instrument of transfer, or," and

(*ii*) in the last line, the words "whichever is greater,"

shall be omitted.

Sir, my reason for moving this amendment is this: that the proposed section provides for two alternatives—one is six times the annual rent of the holding, and the other is 25 per cent. of the consideration money as set forth in the instrument. Sir, in the latter case there is every possibility of the consideration money being undervalued, and there may be a suspicion in the minds of the landlords that the proper value has not been stated in the deed of sale. So, I propose that the other alternative, viz., six times the annual rent of the holding, should be retained, because the jama is fixed and there can accordingly be no suspicion.

With these words, Sir, I commend my motion to the acceptance of the House.

The following motion was called but not moved:—

Maulvi AZIZUR RAHMAN to move that in clause 23 (*2*), in clause (*b*), lines 3 to 5, of section 26D—

(*a*) the words "twenty-five per cent. of the consideration money as set forth in the instrument of transfer, or" shall be omitted; and

(*b*) in line 6, for the words "six times the annual," the words "one year's" shall be substituted.

Maulvi ABUL KASEM: Sir, in the absence of Babu Jitendralal Bannerjee, may I have your permission to move amendment No. 402?

Mr. PRESIDENT: Yes, you have my permission.

Maulvi ABUL KASEM: Sir, I beg to move that in clause 23, in the proposed section 26D (*b*), lines 3 to 8, for the words beginning with "to twenty-five per cent." and ending with "whichever is greater," the following shall be substituted, namely:—

"to five per cent. of the consideration money as set forth in the instrument of transfer or to an amount equal to the annual rent of the holding or of the portion or share transferred, whichever would be less."

In doing so, I have only to say that the House has come to a decision—has given its considered verdict—with reference to the question of salami in respect of transfer of holdings for which a produce-rent has been fixed. This is a motion which refers to those holdings for which a money-rent is fixed and paid. There is a good deal of difference between the two classes of holdings, and, therefore, Sir, I think that we shall be justified in pressing this motion in the light of the decision already arrived at by this House. My friend, Mr. Jitendralal Bannerjee, in speaking on another motion remarked to-day that this was a piece of legislation which was wanted by nobody. I think, Sir, whether it was wanted by anybody or not, it was the duty of Government to bring forward a piece of legislation necessary for the advancement of agriculture and for the protection of the agricultural population. This population deserve protection, sympathy, and help. The very fact that we have decided various provisions in this piece of legislation in this House in a manner prejudicial to the interests of the agricultural population—the tenants of Bengal—who form about 95 per cent. of the total population of the province, shows that they are so helpless and so incapable of defending themselves, that we the members of this House can with impunity disregard their interests and speak against them, at any rate vote against their vital interests. And who are these people? They are the producers of wealth of this province: they are the people who bring prosperity to this province: and Government itself depends on them.

Sir, Government has introduced legislation for the protection of minors, incapables, and imbeciles, and for even those who cannot manage their own estates. It is a matter of surprise and regret that Government have not thought fit to take steps to protect people who deserve protection most.

Sir, we have been told that this piece of legislation was arrived at after consultation and as a matter of compromise. I think, Sir, the business of Government is to bring forward a just and equitable piece of legislation, and to let this House decide on a compromise. It was no business of theirs to come to a compromise with the landholding classes. In fact, the rights which they have given to the tenants by this piece of legislation are fettered with so many reservations that the tenants might as well say : "Take it back; we do not want it." But, Sir, I can tell my friends the Swarajists and the landholders, and their satellites, that they may enjoy whatever advantages they may secure by this piece of legislation for three or four years only, but on the next occasion when the voters are led to the polling booth, it will be for the agriculturists to say.....

Mr. PRESIDENT: Maulvi Sahib, your remarks are of a sweeping character; you have drifted away from the amendment. Will you please come back to the amendment itself?

Maulvi ABUL KASEM: Well, Sir, I bow to your decision. I shall only say that if this House is wise, just, and fair, it will accept the amendment which I have moved: if not, we shall have to wait for another occasion to carry it, and then we shall carry it with vengeance.

The following motions were called but not moved:—

Babu AMARENDRA NATH GHOSE to move that in clause 23, in proposed section 26D (*b*), for the words beginning with the words "to twenty-five per cent." and ending with the words "is greater," the words "to eight times of the annual rent of the holding or the portion or share transferred" shall be substituted.

Mr. BIJOY PRASAD SINGH ROY to move that in clause 23, in clause (*b*), of the proposed section 26D, for the words "twenty-five" the words "thirty-three" and for the word "six" the word "eight" shall be substituted.

Babu SACHINDRA NARAYAN SANYAL to move that in proposed section 26D (*b*), for the words "twenty-five per cent.," the words "thirty-three per cent." shall be substituted.

Srijut NAGENDRA NATH SEN: On a point of order, Sir. We are now considering clause (*b*) of proposed section 26D. Amendment No. 406 covers clauses (*b*), (*d*) and (*e*) of proposed section 26D.

Mr. PRESIDENT: I think I considered a similar point yesterday: What is the difficulty? If the amendment is carried some consequential amendments will set matters right.

Babu MAHENDRA NATH MAITI: Sir, I beg formally to move that in clause 23, in the proposed section 26D, in clauses (*b*), (*d*) and (*e*), for the words "twenty-five" the word "twenty" and for the word "six" the word "five" be substituted.

Babu ROMES CHANDRA BAGCHI: Sir, I beg to move formally that in clause 23, in proposed section 26D (*b*), in lines 3 and 4, for the words "twenty-five per cent.", and in line 6 for the words "six times the annual rent," the words "twenty per cent." and "five times the annual rent," respectively, shall be substituted.

The following motions were called but not moved:—

Babu AKHIL CHANDRA DATTA to move that in clause 23, for the words "twenty-five" in clause (*b*) of the proposed section 26D, lines 3 and 4, the word "twenty" shall be substituted.

Mr. SYED MD. ATIQULLAH and Maulvi ASIMUDDIN AHAMAD to move that in clause 23, in the proposed section 26D (*b*), in lines 3 and 4, for the words "twenty-five per cent.," the words "fifteen per cent." shall be substituted.

Maulvi ASIMUDDIN AHAMAD: I beg to move that in clause 23, in the proposed section 26D (*b*), in lines 3 and 4, for the words "twenty-five per cent." the words "fifteen per cent." shall be substituted.

He spoke in Bengali, the English translation of which is as follows:—

"Sir, I beg to move that the words 'twenty-five per cent.' in lines 3 and 4 in the proposed section 26D (*b*) in clause 23 be substituted by the words 'fifteen per cent.' At yesterday's sitting landlord's fees of 20 per cent. was passed in case of lands for which rent is given in produce. The custom of paying rent in produce may be prevalent in Western Bengal but throughout Eastern Bengal we have money-rent system. Not only 99 per cent. of the raiyats pay money-rent but also middle-class men, that is, talukdars and zamindars who have raiyati holdings do the same thing. My motion relates to this great body of raiyats as well as a part of the middle class in Bengal. In regard to the landlord's fee, the latter too will have to share in the hardship to which the former will be put. The subject which we are discussing to-day is of vital importance to the people. Never before under British rule has a more important subject been discussed in the Bengal Legislative Council. You should have considered it very carefully and impartially. But a study of the last few day's speeches and division lists shows that we are not giving our votes as impartial legislators. Each group is fighting for its interest. The tenants to whom the law will apply are not present in this House. The efforts of a handful of representatives that they have got are proving useless. All of us here belong to some group or other but we expected that Government would look impartially to the interests of all. But contrary to our expectations they have proposed to amend the Bill in such a partisan spirit that its result will be to bring about the total destruction of the tenantry in Bengal. Motions for reduction of landlord's fee to Rs. 12-8, Re. 12 and Rs. 10 stood in the names of my Swarajist friends, Babu Amarendra Nath Ghose, Babu Promotha Nath Banerjee and Babu Jogindra Chandra Chakravarti respectively. But at their party meetings permission was refused them to move these motions. (Cries of question, question!) What I am saying is nothing but the truth. Sir, as we too belong to the Congress Party, the party should have consulted us before deciding to fix the landlord's fee at 20 per cent. The Congress Party have gone against the mandate of the people and done injustice to the Moslem members of the party. To judge from the temper of the Swarajist group and the attitude of

Government, it would be quite useless to move for the reduction of the landlord's fee to anything below 12 per cent. or thereabout. By moving to fix it at 15 per cent. I am giving a chance to Government and my Swarajist friends. The landlords demand 30 to 33 per cent. while the tenants are not prepared to pay more than 5 per cent. The middle course would be about 12 or 15 per cent. As the landlords will now be entitled to get something in every case of transfer, 15 per cent. also appears to be too much. But all the same I am prepared to give a chance. Sir, is it because there is custom to pay the landlords salamis in certain cases that Government have thought fit to take legislative measures to make the payment compulsory and fix it at a high rate? Are Government prepared to enact a law making payment of bribes to Police and other Government officials compulsory as offering of bribes to them in certain cases is customary? Are Government prepared to legalise all illegal extortions by landlords or their officers? The manner in which Government are going to amend the Bill is calculated to give more power to the powerful and to drive the tenants to the path of ruin. They have already by giving the landlords the right of pre-emption paved the path for passing of land from the hands of tenants into the hands of non-agricultural bodies. I appeal to my European and Swarajist friends to be guided by consideration of justice and sympathy for the impoverished tenants, and to give their votes impartially."

During his speech he was called to order by the Hon'ble the President for drifting away from his amendment.

Babu JITENDRALAL BANNERJEE: On a point of order. Sir, whatever may be your decision on this particular case, may I submit that the two questions of pre-emption and salami are so inter-connected with each other that they cannot be discussed spearately?

Mr. PRESIDENT: I have always shown my reluctance to stifle discusion or make our debate dull and lifeless. I really do not think that the human mind can always be driven over the same old rut like a machine-driven vehicle. In this particular case, it is very difficult to follow the speaker as he is jumping from one thing to another and is frequently drifting away from his subject for no rhyme or reason.

4 p.m.

The following amendments were called but not moved:—

Babu AMARENDRA NATH GHOSE to move that in clause 23, in lines 3 and 4, in section 26D (*b*), for the words "to twenty-five per cent."

and the words in lines 5 and 6 "or to six times the annual rent," the words "to twelve and a half per cent." and "or to four times the annual rents" shall be, respectively, substituted.

Maulvi ASIMUDDIN AHAMAD to move that in clause 23, in proposed section 26D (*b*), lines 3 and 4, for the words "twenty-five per cent.", the words "twelve and a half per cent." be substituted.

Babu PROMOTHA NATH BANERJEE to move that in clause (*b*) of the proposed section 26D, for the words "twenty-five per cent." the words "twelve per cent." and for the words "six times" the words "four times" be substituted, and the words "where there is custom to pay" be added after the words "as set forth in the instrument of transfer."

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Mr. Khwaja Nazimuddin, may I have your permission to move the amendment standing in his name?

Mr. PRESIDENT: Yes, you have my permission.

Khan Bahadur Maulvi AZIZUL HAQUE: I move formally that in clause 23, in the proposed section 26D (*b*), for the words "twenty-five per cent." the words "ten per cent." be substituted, and the words beginning with "or to six times" up to the word "greater" be omitted.

The following amendments were called but not moved:—

Babu JOGINDRA CHANDRA CHAKRAVARTI, Maulvi KADER BAKSH, Mr. SYED MD. ATIQULLAH, Maulvi ASIMUDDIN AHAMAD and Maulvi ABUL KASEM to move that in clause 23, proposed section 26D, clause (*b*), lines 3 and 4, for the words "twenty-five per cent.," the words "ten per cent." shall be substituted.

Maulvi ASIMUDDIN AHAMAD to move that in clause 23, proposed section 26D (*b*), lines 3 and 4, for the words "twenty-five per cent.," the words "seven per cent." shall be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Khan Bahadur K. G. M. Faroqui and with your permission I formally move that in clause 23, in proposed section 26D (*b*), in lines 3 and 4, for the words "twenty-five per cent." the words "six and one-fourth per cent." and in line 6 for the words "six times the annual rent" the words "one and a half times the annual rent" shall be substituted.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, the best argument of the day has been advanced by my friend, Maulvi Asimuddin Ahamad. It is a fact known to Government that some of their officers take bribes. Would the Government be justified in legalizing bribes? Certainly not. Similar is the case so far as the question of nazar or premium is concerned; and as such, Government is not at all justified in enacting a law legalizing, and compelling the agriculturists in the country to pay nazar to the landlords for all the transfers that are made.....

Mr. PRESIDENT: You did not read out your amendment. What I find is that part (*iii*) of your amendment, namely, that in line 7, the words "or of the portion or share transferred" shall be omitted, does not arise, because this is governed by amendment No. 394 which was lost. So, you should be moving your amendment without part (*iii*).

Khan Bahadur Maulvi EKRAMUL HUQ: All right Sir. I beg to move that in clause 23, in the proposed section 26D (*b*) (*ii*), line 3 and 4, for the words "twenty-five per cent.," the words "five per cent." shall be substituted.

(*ii*) In lines 5 and 6, for the words "or to six times," the words "to double" shall be substituted.

(*iii*) In line 8, for the word "greater," the word "less" shall be substituted.

(*iv*) In line 8, after the word "greater," the following shall be added, namely:—

"but which in no case should be less than Re. 1 and more than Rs. 5."

We have times without number brought all these things before the notice of Government. We have by arguments made it clear to the House that Government is not at all justified in not considering all the reports received from high officers under Government which support the tenants' cause and in not acting upon them. Government is not at all justified in enacting that 25 per cent. salami should be paid to the zamindars for all transfers. This being the case, I make a fervent appeal that Government officials should consider their position. They should look facts in the face and do what is right. If they say that all that was done was certainly right, I think that would not be an argument worthy of the Government; that can only be an argument of a helpless creature which the Government, I hope, is certainly not. Government should consider whether they are at all justified in keeping the figure as given in the Bill or they should lower it and accept the amendment. So far as this question is concerned, I have communicated to this House that I do not think that a

single pice should be given to anybody in the land on transfer of tenant's holding, but that question has already been decided against me by the House and I cannot say anything on it now. In my amendment I have indicated in the first place that as the members have decided that some salami should be paid, then in that case the amount of salami should not be more than 5 per cent. of the consideration money. My submission is that you have already decided that salami should be paid to the landlords even on part-transfers and I have told times without number that part-transfers will be about 80 per cent. of full transfers. This being the case the zamindars will be getting on part-transfers an amount which they never got before. Are you therefore out to secure to the zamindars that which they were not getting in the past or what they were actually getting? I think you cannot dare say that Government should get more, but from your action it is quite apparent that that is actually what you intend to do. I think if you do not accept 5 per cent., if you consider that amount too low, you may go a little higher up and find a via media and afford real relief to the masses. It is your duty to do that and I can assure this House that if Government comes to a decision, the European members will generally agree to that. If Government and the European members of this Council support the tenant's cause, I am sure we who represent the tenants interests will be able to carry this very reasonable proposal in spite of the Swarajist and zamindar opposition. I know the landlords will vote against us, but I hope with the assistance of the European Members and the Government benches we shall be able to defeat them as we have done so several times. If Government cannot accept the proposition, postpone its consideration, think over it and hold a committee consisting purely of officials and ask that committee to say what is reasonable. If they say that your proposal is a reasonable one, we shall willingly accept it. The next thing I have brought forward in my amendment is that instead of six times the annual rent the salami should be only double the rent. My reasons are that it will be found in places that the quality of the soil is so bad that no person will come forward to pay any price for the land. I know this from personal experience; I have myself purchased lands on Rs. 3 per bigha and if I am called upon to pay a salami of six times the annual rent, the result will be that the zamindars will get Rs. 3 per bigha and nothing will be left for the seller. If the tenant is called upon to pay six times the annual rent to the zamindar, the result will be that he will have to pay a considerably large amount to the zamindar, and he himself will get nearly nothing in many cases. So the provision, as it stands in the Bill, will be of no use to the tenantry. Further, I have in my amendment No. (*iv*) brought it to the notice of the House that you should not make it compulsory on the purchaser to pay of the two amounts mentioned in the amended section, namely, 25 per cent. of the consideration

money or six times the annual rent, the amount which is greater. In my opinion they should be called upon to pay the lesser amount. In consequence of the fact that I have never recognised that the zamindar is entitled to get anything more than the annual reut. I have put in another amendment to the effect that the amount of salami should not be less than Re. 1 and more than Rs. 5. I must say that it is not the importance of the subject that counts, nor even the desire of the masses of the country and the agriculturists, but it is the desire of the members of this Council that prevails in this matter. So far as I am concerned, I say that I shall abide by the decision of the European members of the House if it be just. I hope they will take courage in both hands and act justly and honourably. I therefore formally move the amendment that stands in my name.

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Maulvi Abul Kasem and with your permission I formally move that in clause 23, in proposed section 26D (*b*), in lines 3 and 4, for the words "twenty-five per cent.," the words "five per cent." and in line 6, for the words "six times" the words "three times" shall be substituted.

The following amendment was called but not moved:—

Maulvi ASIMUDDIN AHAMAD to move that in clause 23, in proposed section 26D (*b*), lines 3 and 4, for the word "twenty-five per cent.," the words "five per cent." shall be substituted.

Maulvi NURUL HUQ CHAUDHURI: I move that in clause 23, in the proposed section 26D (*b*), for the words "twenty-five per cent.," the words "two per cent." shall be substituted.

Sir, I rise to move my amendment with some diffidence. It would be unreasonable to expect that my Swarajist friends will listen to any arguments of humanity or patriotism; yet I owe it to my countrymen, to the poor tenants of Bengal to make one last appeal to them. We all know that most of the raiyats in Bengal have to go with one meal a day. A burden of Rs. 20 or 25 per cent. will mean an addition of 4 to 5 crores of rupees on the shoulders of these poor raiyats. Only a month ago they had been wailing the fate of the raiyats in the famine-stricken areas of Bengal—in Dinajpur and Bankura. They had almost wetted their khaddars with the tears of their eyes. They had been sneering at the Government.....

Mr. PRESIDENT: I am afraid, you are quite beside the point. I have already ruled that you are not permitted to level any attack on any party at this stage, nor to drift away from the amendment that is before the House. If you please remember this ruling, I think there will be no further trouble.

Maulvi NURUL HUQ CHAUDHURI: I hope my Swarajist friends will convince.....

Mr. PRESIDENT: You are not following my direction at all.

Maulvi NURUL HUQ CHAUDHURI: The only argument that I have heard from my Swarajist friends.....

Mr. PRESIDENT: Maulvi Sahib, you are again drifting away from the amendment now before the House. You are not following my directions.

Maulvi NURUL HUQ CHAUDHURI: Very well, Sir, I would say certain members. So far as the best argument advanced for the levy of this new impost of 20 or 25 per cent. has been that the landlords themselves have been subjected to similar extortions by the officials of Government. I do not know how far it is true, but if there be any truth in this, then it has been a very good investment on their part, as the officials on the Government bench are standing them in good stead. I need not detain the House any longer. The question has been discussed from every point of view. I formally move my amendment and I hope the House would accept it.

The following amendment was called but not moved:—

Mr. SYED MD. ATIQULLAH to move that in clause 23, in the proposed section 26D (*b*), in lines 3 to 5, for the words from "twenty-five per cent." to "transfer," the words "Rupee one only" shall be substituted.

Maulvi SYED NAUSHER ALI: I beg to move that in clause 23, in section 26D (*b*), for the word "twenty-five," the word "one" be substituted.

Sir, I do not wish to inflict a speech on the House, but I think I owe a word of explanation as to why I wish to replace the figure "twenty-five" by "one." I do not accept for a moment that the proprietary right in the land was ever given by the Permanent Settlement to the zamindars, that is my standpoint and that is why I thought it necessary to reduce the figure to one and I agree to one also not by way of salami, not by way of nazar, but as mutation cost. If I be permitted at this stage just to say one word with regard to salami or nazar, I may say that the word salami itself is degrading, it has got a denotation which is regarded with a good deal of indignation in the country. In the olden days the landlords, if I may say so, used to be worshipped as a deity and even now there are tenants in some places who worship their homestead landlords and they call

it Bastu Puja. It was in this way that the custom of salami or nazar originated. A tenant when he became a tenant first, went to his landlord and paid his homage to the landlord and gave him nazar and that custom to a certain extent even now exists in some places and at that time he had to pay a certain amount of money by way of salami to the landlord. I hope the European members of this House have by now from their experience understood what is meant by salam. It is generally given by a man who is inferior in status to one who is superior in status.

Mr. PRESIDENT: You have in a manner admitted that—at any rate, you have not taken any objection to that in your amendment and so it is now useless for you to labour that point.

Maulvi SYED NAUSHER ALI: Sir, what I was going to submit was that the amount cannot be so high as it originated in that way and it was perfectly discretionary with the tenant to pay it or not in the beginning. Therefore it cannot be extortionate and that is my point, and that is why I have been trying to show how it originated. However, I have finished with that point. Then came a time, Sir, after the Permanent Settlement when the landlords somehow or other got the right to extort an amount of money from the tenant. The law, it is said, gave them the right to eject a man who had already taken by transfer a certain quantity of land from a raiyat and he was compelled to appease his landlord by paying whatever money the landlord wanted. In this way the custom originated of giving one-fourth of the purchase money in some places it was less than one-fourth and in some places, as has already been stated by some members, that it exceeds even cent. per cent., because the transferee of the land knew full well that he could not remain on the land without pleasing the landlord and so he had to pay whatever amount the landlord wanted. Now, Sir, therefore, it is not a question of custom at all, but it is a question of extortion on the part of zamindars. I would submit, Sir, that if that be the origin of the system and I do not think any member of the House will deny that—there are only two courses open. If Government admit that by the Permanent Settlement the proprietary right was given to the landlords and the landlords can choose to treat the tenants in whatever way they liked, Government cannot be justified in any way now to restrict the rights of the zamindars either to accept 25 or 50 or even any per cent. If that be the position I do not find any justification whatsoever for the Government restricting the rights of the zamindars, but if that be not the position, if Government comes forward with this Bill and says, "No, we did not give that proprietary right to the zamindars," then I hope Government ought to come forward not with this proposal

but with a proposal that the raiyat is the owner of the land and he has got certain rights in the land which he can freely transfer, and there ought to have been no restriction on the transferability of land. An intermediate position is also conceivable and that is the position which has been taken up by Government. I think Government now wants to make us believe that they want to protect the tenants from the zamindars. Well, Sir, if the Government have that right they will be perfectly justified in bringing forward any legislation that protects the raiyats from the oppression of the zamindars. Sir, in that view of the case, we who have been speaking on behalf of the tenants on this side of the House will say like my friend, Mr. J. L. Bannerjee, "We do not want the protection that you want to give us, it is no protection to the tenants, but it is a protection to the landlords. We want to be exactly in the same position where we were. We do not want your protection and we will agree to settle with our landlords in whatever way we can." I know, Sir, what the fate of my amendment will be. I know that even now I am the laughing stock of some of my friends, because when the House had decided 20 per cent., I have come forward with an amendment proposing to give only one per cent. I know all that and I know that ours is a cry in the wilderness, but my experience of these few days has also reminded me of the saying that the law grinds the poor man and rich men make the law. Here we have a definite example. As Government has come forward with a Bill saying: "We want to protect you, we are giving you this protection." We say that we do not want that protection. Why thurst upon the people, as a protective measure for the tenants which is not wanted by them. I for myself would raise my feeble but most emphatic voice on behalf of the tenants that we do not want this legislation; take away your gift, take away your kindness and take away your sympathy. We do not deserve any. If the time comes we will show what our rights are as against the Government and as against the class who claim to have got any vested interest in the land. I can quite appreciate the position of Government in this matter. Government is perhaps in a false position. If it is conceded once that the proprietary right was vested in the zamindars then I would emphatically say, Government are unjust and unreasonable in bringing forward any Bill that wants to restrict or take away the rights that have been given to zamindars. This Bill can be characterised in that way. This zamindary system was made in the interest of.....

Mr. PRESIDENT: We are not discussing that.

Maulvi SYED NAUSHER ALI: Sir, I bow down to your decision. It seems very difficult not to go to this matter as the whole thing hinges on that. However, after all I am not going to discuss that

point any longer. Sir, I want to say one word and I shall finish. It is this: on this side of the House we may be charged with unreasonableness and perhaps in that way we were charged yesterday as it was stated that the whole House agreed to the compromise except the Muhammadan group on this side. I beg to say, Sir, only one word with regard to that.

Mr. PRESIDENT: With regard to what? Are you speaking on the amendment?

Maulvi SYED NAUSHER ALI: Yes, Sir, I am speaking on my amendment. I hope, Sir, you will not be unjust to me. I was just making my submission whether my amendment is reasonable or not. And after one word, Sir, I shall resume my seat. As regards reasonableness and justice I will just state one thing. What is justice and what is reasonableness?

Mr. PRESIDENT: Are you proposing a discussion on justice and reasonableness? (Laughter.) You better show why 20 per cent. or 25 per cent. is more than what the tenants should pay, you better make an attempt to show why not more than one per cent. should be charged.

Maulvi SYED NAUSHER ALI: I am speaking with reference to my amendment. I am showing whether my amendment is reasonable or not and in order to explain that I was going to relate an anecdote. Reasonableness and justice seem to be a question of minority and majority. Here we are in a hopeless minority. Therefore whatever is decided by the majority is just and reasonable, and we shall at once be ruled out as unreasonable. As regards that, Sir, I was just going to illustrate it by an anecdote if you will allow me to do that.

Dr. BIDHAN CHANDRA ROY: Let us not lose that.

Mr. PRESIDENT: No fear, I love anecdotes. (Laughter.)

4-30 p.m.

Maulvi SYED NAUSHER ALI: I must support my amendment by an anecdote and the anecdote is this: A poor man was sent to a lunatic asylum; after a time he came back, and when he was asked by the people why he was sent to the lunatic asylum, he said "I was sent there because all of you considered me to be a lunatic whereas I consider you all to be lunatics." So it was a question of majority only and that is why he was considered to be a lunatic. Similarly I may also be considered to be a lunatic (Laughter) and my amendment may not be accepted as reasonable, but I say and say most emphatically that if you go out of the Council Chamber to the country

you will find that you are in a hopeless minority and that at least 95 per cent. of the people will give you the verdict that you are unreasonable, you are lunatics.

With these remarks I commend (I know I cannot command) my amendment to the acceptance of the House.

Mr. SARAT C. BASU: I rise on a point of order. I think it would be reasonable to discuss all these amendments after 26F which specially relates to the proviso to section 26D which deals with the proportion of rates payable according to 26A. I think these two things should be discussed first, for the question whether the landlord's fee should be 20 per cent. or one per cent. depends on whether the pre-emption clause goes through the House or not. I think Sir, it is a reasonable request.

Mr. PRESIDENT: I do not agree with you, Mr. Basu. I think no injustice will be done if we discuss these amendments at this stage. I rule you out of order.

The following amendments were called but not moved:—

"**Babu AMULYA CHANDRA DATTA** to move that in clause 23, in section 26D, the words 'or to six times the annual rent of the holding or of the portion or share transferred, whichever is greater,' wherever they occur, be omitted."

"**Maulvi SHAMSUR RAHMAN, Mr. SYED MD. ATIQULLAH and Maulvi ASIMUDDIN AHAMAD** to move that in clause 23, in the proposed section 26D (*b*), lines 5 to 8, the words 'or to six times the annual rent of the holding or of the portion or share transferred, whichever is greater' shall be omitted."

"**Maulvi KADER BAKSH, Babu SACHINDRA NARAYAN SANYAL and Babu JOGINDRA CHANDRA CHAKRAVARTI** to move that in clause 23, in the proposed section 26D (*b*), line 6, for the words 'six times the annual rent,' the words 'ten times the annual rent' shall be substituted."

"**Maulvi NURUL HUQ CHAUDHURI** to move that in section 26D, in clause (*b*), for the words 'six times,' the words 'ten per cent. of' shall be substituted."

"**Kazi EMDADUL HOQUE** to move that in clause 23, in the proposed section 26D (*b*), in line 6, for the words 'six times,' the word 'twice' shall be substituted."

Maulvi SYED NAUSHER ALI: I beg to formally move that in clause 23, in clauses (*b*), (*d*) and (*e*) of the proposed section 26D, for the words "six times," the word "half" be substituted. I do not want to add anything.

Maulvi SYED NAUSHER ALI: I beg to move that in clause 23, in clausse (*b*), (*c*), (*d*) and (*e*) of the proposed section 26D, for the words "whichever is greater," the words "whichever is less" be substituted.

According to my principle which I have already stated I am of opinion that the zamindar is not entitled to anything except the mutation fee and therefore I am asking that "whichever is the lesser" should be used in this section.

Maulvi TAMIZUDDIN KHAN: I beg to formally move that in clause 23, in proposed section 26D (*b*), for the words "whichever is greater," the words "whichever is less" shall be substituted.

The following motion was called but not moved:—

"**Babu AMARENDRA NATH GHOSE and Maulvi NURUL HUQ CHAUDHURI** to move that in clause 23, in proposed section 26D (*b*), for the last word 'greater,' the word 'less' shall be substituted."

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 23, in the proposed section 26D, for the word "greater" the word "less" wherever it occurs, be substituted.

My intention in moving this amendment is to appeal once more on behalf of the poor tenants so that a little more justice may be done to them. The law as it stands, the sections, which are going to be enacted into law, provide that you can extort as much as possible from them—and I make one more appeal in the name of those millions whose voice may not be effective to-day but whose voice will come with mightier force in days to come. You might do them a little justice, Sir, and put in the words "whichever is less" for the words "whichever is greater." All our attempts have gone in vain and as we foresee things, our further attempts also will be useless and in vain. But, knowing this full well, I again make an appeal so that I may be discharging my duties and leave the consequence to the future and posterity.

Maulvi A. K. FAZL-UL HUQ: Is my friend in order in making constant appeals knowing them to be useless?

Khan Bahadur Maulvi AZIZUL HAQUE: Over and over again in this hall we have been hearing that the interests of the landlords and the interest of the tenants are the same, and that by virtue of the principle and doctrine of conservation of energy they maintain that 25 per cent. of the tenant's money is as good as 25 per cent. of the landlord's money, and they want that the tenants must pay 25 per cent. to the landlords so that equilibrium may be maintained.

There is another point. My friend has referred to the famine in Balurghat and Bankura. If you look to the agrarian history of Bengal you will see that wherever there is famine or distress a large number of occupancy raiyats transfer their rights because they cannot find sufficient money to purchase the absolute necessaries of life. I ask the Hon'ble Member for Revenue who is also the Member in charge of famine whether it is not a fact. If it be a fact, is it not hard on these poor people that at a time when famine is raging in a particular part of this country and people are in need of money—on such an occasion as this the landlords need must get 25 per cent. or 20 per cent. as their fee? Again, in the name of the poor peasantry of Bengal, I appeal to you to accept my amendment which means that you are going to do some justice to them, and that it is a definite move to do the best of a bad bargain. I know full well that in a matter like this opinions are sharply divided and that in spite of our earnest negotiations to come to a compromise we have failed. But still I make an appeal, for I believe that some day or other you shall have to do justice to these millions. I will conclude by saying only a few words more; and by pointing out one fact. If you pass this legislation, take it from me—and I say this to the Government members as well—that this will be the beginning of the alienation of the masses so far as Bengal is concerned. The masses are still in favour of British rule and they like that the British should remain in the country. If you pass this legislation—then, I say with my humble voice—that just as the Swaraj Party represents the alienation of the intelligentsia of this country this legislation will stand as the beginning of the alienation of the masses of Bengal. (Cries of question, question.) My friends question this, but to know whether it is not a fact I am quite prepared to go to their own constituencies (VOICES: We accept the challenge) and again I do definitely say that this is the beginning of the alienation of the masses, for the simple reason that to-day or to-morrow it will affect the masses. I am giving this warning not as a non-co-operator but as one who has co-operated with Government at all times, in all measures, in measures good, bad or indifferent without caring to scan them (cries of shame, shame) but now my friends who are crying "shame" to their standing shame and disgrace is in holy alliance and is giving full co-operation to Government while they came to destroy this very Government. It is not for them to charge us with Bolshevism and communism.

Mr. PRESIDENT: Please do not pursue that path, it is full of thorns. (Laughter.)

Khan Bahadur Maulvi AZIZUL HAQUE: If there are thorns we want the thorns to be removed by the combined wisdom of this House and by our efforts. One word more and I have done. Up till now

though we have passed many sections of this piece of legislation during the last few days, we have not heard anything from the Government side as to what the interest of the tenants should be. We have heard that the landlords' usage and custom should not be disturbed. We have heard that the landlords have got to do this thing or that, but we have not heard that tenants have got any rights at all. My friend has pointed out that what is illegal cannot be legalised, but that is exactly what you are going to do. The Hon'ble Revenue Member a few minutes ago said that part-transfers have no legal effect. I ask him whether it is not a fact that during the year 1913 2,500,000 occupancy rights were transferred and can the Revenue Member point out a single instance where the landlords went to court because they were transferred. I may say that those figures have now risen enormously high. Though the legal effect of part-transfers is a matter which may be open to discussion so for as Government is concerned, yet in the country and abroad, to courts and officers of the Crown, hundreds of thousands of such transfers are made without disturbance of those rights. In that view I once more appeal to my friends that they will kindly see the justice of my amendment and accept it.

The following amendment was called but not moved:—

Babu AMARENDRA NATH GHOSE and Maulvi NURUL HUQ CHAUDHURI to move that in clause 23, in proposed section 26D (*b*), for the last word "greater," the word "less" shall be substituted.

Mr. PRESIDENT: All the amendments in this group have been now moved and they will be open for discussion after adjournment.

[At 4-40 p.m. the Council was adjourned and it reassembled at 4-50 p.m.]

Srijut BIJAY KUMAR CHATTERJEE: I move that the question be now put.

Mr. PRESIDENT: I do not agree with you, for these amendments have not been discussed at all; they have only been moved.

Mr. F. A. SACHSE: After all these appeals and speeches it will be as well to remind the House of the exact issue which underlies all these amendments. The real proposal on which we shall vote is whether the rent or the value of the land should be the basis for reckoning the salami. The proposal is really the same as in the second part of amendment No. 395 and in 439. That proposal is that the

words "whichever is greater" shall be replaced by the words "whichever is less." The effect would really be the same because all over Bengal, so far as it is possible to make such a general statement, one-quarter the value of the land is very much more than six times the rent or even twenty times the rent. There were many members of Sir John Kerr's Committee who were prima facie in favour of using the words "whichever is less" instead of the words "whichever is greater," but when they considered the matter carefully they found that it was absolutely necessary to keep the word "greater." If the word "less" appeared instead of the word "greater" the salami would in every case be based on the rent. The tenants' representatives think that this would be a good thing because it would reduce the general average rate of salami. Here comes in a great anomaly, a great injustice. Ordinarily in the villages of Bengal lands are more or less equally fertile and the value of a holding depends on the amount of rent that is payable for it; the lower the rent the greater is the value of the land. Hence the result of accepting this amendment would be that the more the value of the land, the less will be the salami that the zamindars will get. That, therefore, is the issue on which we will be called upon to vote.

Coming to the appeals of Khan Bahadur Maulvi Ekramul Huq and Maulvi Abul Kasem they have asked us to consider the fate of the poor raiyats. They cannot get it out of their heads that it is the real cultivators, the people who toil in the fields in the sun and the rain, who will pay lakhs, if not crores of rupees, to the landlords annually. Even if they did, it might be less than they now spend on litigation. But however that may be, I quite admit that these are the people whom Government should think of first and foremost when dealing with the Tenancy Bill. But the point I wish to emphasise is this: Genuine cultivators never sell their lands until they are hopelessly in debt, until they are ruined. Does it make very much difference whether they get Rs. 400 or Rs. 500 for their land? Probably neither sum will satisfy their debt. The utmost farthing will go to the creditors. Thereafter they will always be under-raiyats or bargadars. In any case these people will only pay once. What is paid for the same land to the landlord, the second time and the third time and the fourth time, will be paid by capitalists and mahajans. Think, sir, of the mahajans of Bankura who have already turned out most of the Santhals and converted them into rack-rented tenants-at-will. Need we pity them if they have to pay 20 per cent. of their ill-gotten gains when they buy and sell. If anything said in this debate reconciled me to a salami of 20 per cent. or 25 per cent. it was the speech of the temporary supporter of the tenants, who is well known in this House for his eloquence. What did he say? That it was iniquitous to give any rights to under-raiyats at the expense of the raiyats. It can never be iniquitous to give rights to anybody and if under-raiyats cannot get

rights at the expense of raiyats, where are they to get them? If this is the attitude of the raiyats who in 1885 got their all-valuable rights with the help of Government after they have left the fields and come to the Legislative Councils, then I am prepared to state that the zamindars of 1793 have at least as much right as they have to the unearned increment. The payment of salami is really a distribution of the unearned increment. It is true that in 1793 there were more lands than cultivators and the realisation of salami was never considered when estimating the assets on which the Permanent Settlement was based. But similarly in 1885 when raiyats were given a right equivalent to ownership on practically a fixed rent, it was not considered how much they would be able to make out of the sale of these rights in the future. This is at least an argument for giving a moderate salami on transfer to the landlord and it is a charge which the High Court has always held to be legitimate. It has never been forbidden as an abwab.

In order, therefore, that the landlords may get a salami which will have some relation to the value of the land; we oppose all these amendments.

Babu JITENDRALAL BANNERJEE: Mr. President, I have heard one strange and astounding argument to-day from Mr. Sachse, and it is this: "It does not matter very much to the poor raiyat whether he gets Rs. 400 or Rs. 500 for his land." A trifle, a bagatelle, a mere paltry sum of Rs. 100 or so does not matter much to the poor, it only affects the rich! This, I say, is a most curious and unheard of piece of argument. Why, Sir, it is precisely the poor man who will feel the difference, not merely of Rs. 100 but even of a sum of Rs. 5. Mr. Sachse argues that the money after all will go into the pockets of the mahajans and money-lenders. Perhaps it will. But even so it will help to wipe off the tenant's debt.

Another astounding piece of argument—astounding because it has come from a man in Mr. Sachse's position—is this: "Why should the tenant, why should the raiyat, get the whole of the unearned increment from the land?" Will Mr. Sachse deny that, so far as the raiyat is concerned, it is not unearned increment at all? For the zamindar, it may be unearned increment—because the zamindar never spends a single pice on the land. But the raiyat spends his all upon the land: he puts his money into it and he puts his labour into it. And why then should he not be entitled to draw all that he can from the land? By every principle of justice and equity, it is the raiyat who is entitled to the increment and no one else. So far as the raiyat is concerned it is a travesty of fact and logic to say that he is going to get unearned increment from the land.

Sir, the other day in supporting Maulvi Asimuddin Ahamad's amendment I said that the idea of granting salami rested on the exploded superstition of the land being the property of the zamindars. In reply Sir Provash Chunder Mitter flourished before me the Permanent Settlement and twitted me with lectures and the class room. I think Sir Provash would not have lost much; indeed he might have been benefited greatly, if he had attended an additional course of lectures in the class room. They teach better History in these days than when Sir Provash used to read; and had he been a student today, he would have profited much more than he has been able to do. Sir, jesting apart, what does his argument amount to? He says that the Permanent Settlement conferred certain proprietary rights upon the zamindars, and it does not matter whether they had these rights before or not. The obvious implication of the argument is that what the Permanent Settlement has done nothing else can undo—that it stands and shall continue to stand, firm, immovable and sure, proof against all shocks of chance and circumstance! And, Sir, here I must enter my protest against the superstitious veneration with which some people speak of the Permanent Settlement. To judge from their language, the Permanent Settlement is something unique and *sui generis*. Everything else in this mundane world may be fleeting, transitory and evanescent—but not so the Permanent Settlement which stands like the Rock of Ages—firm, durable and inviolable. I do not know where this curious superstition may have sprung from. Thrones, dynasties and empires—all else may dissolve and disappear in this impermanent world—but the Permanent Settlement of 1793 must continue to shine for ever as a beacon and landmark in the history of Bengal. Sir, boiled down to its essentials, such an argument comes to this: that once you pass a law you can never modify it, you can never repeal it, it is sacred and sacrosanct. Sir, I can conceive of nothing more fallacious in the history of law or of jurisprudence. Why, Sir, the Statute book of every country is strewn with the corpses of dead legislation. Need I remind Sir Provash of this elementary fact? Should I draw his attention to certain well-known facts from the history of England? In England there was a long series of laws restricting and circumscribing the rights of the Roman Catholics. All those were swept away by the Roman Catholic Emancipation Act of 1827.

Mr. BIJOY PRASAD SINGH ROY: How does it come in? Are we discussing the Permanent Settlement here?

Babu JITENDRALAL BANNERJEE: Yes, it comes in by way of analogy and illustration. My young friend has yet to learn much, and he has yet to learn this! Sir, I shall refer to another fact from the history of agrarian legislation in England. What was the position of the Irish tenantry, when Mr. Gladstone introduced his Irish

Land Bill, in 1870 and again in 1881? Had the Irish tenants in those days any rights at all? They had none. They could be ousted without any notice whatever. They had no fixity of tenure in the land which they cultivated, nor had they any guarantee as regards fairness of rent—their rents could be enhanced to any extent that the landlords liked. What did Mr. Gladstone do? He took courage in both hands. He fixed a fair rent for the tenants, he gave them fixity of tenure, and he gave them freedom of sale—the three "F's" with which Mr. Naliniranjan Sarker made some play in one of his previous speeches. Sir, I shall never say that Sir Provash Chunder Mitter is another Mr. Gladstone. He calls himself a liberal, and that perhaps is the only point of contact between the two. At least there is none other that I can discover. Sir Provash has not the vision of Mr. Gladstone, he has not the imagination, nor the wide human sympathies of the great Liberal Chief. If he had these qualities, he would not to-day have taken his stand on that wretched piece of legislation which he keeps flaunting in our face with such parade of generosity and wisdom.

It is clear therefore that there is nothing holy or sacrosanct about the Permanent Settlement—that we can change it if we so choose—and that we *must* change it if it sought to perpetrate or perpetuate a wrong. The question then arises—"Was the Settlement made by the Regulation of Lord Cornwallis a wrong and unjust settlement?" Sir, I shall not say one word of mine on the subject. Hitherto I have never troubled the Council with quotations; but to-day I shall give you some quotations—partly because I find there are so many lawyers in the House and they understand nothing but precedents! The first precedent I shall quote is one to which I should like to draw the pointed attention of Sir Provash Chunder Mitter and the Government benches. It is a communication from the Board of Directors of the Hon'ble East India Company to the Government of India of those days; it occurs in their Revenue letter, dated the 15th of January, 1819—

"In the consideration of this subject, it is impossible for us not to remark that consequences the most injurious to the rights and interests of individuals have arisen from describing those with whom the Permanent Settlement was concluded, as the actual proprietors of the land. This mistake (for such it is now admitted to have been) and the habit, which has grown out of it, of considering the payments of the ryots as rent instead of revenue have produced all the evils, that might be expected to flow from them. They have introduced such confusion into the whole subject of landed tenures, and have given a specious colour to the pretensions of the zamindars, really were, in the ordinary sense of the words, the proprietors of the land, and as if the ryots had no permanent interest but what they derived from them."

So we find that the Board of Directors repudiated, emphatically, and again and again, the assertion that the zamindars were the proprietors of the soil. They said that it was a mistake. But if it was a mistake, it is up to us, up to every legislative body worth the name, to rectify that mistake. This is the first opportunity that has offered itself—it has come as a Heaven-sent opportunity to the Hon'ble Member—and the question is whether he will be able to avail himself of the opportunity. Has he the courage and strength of mind to rectify a great error and remedy a great wrong?

I shall place before the Council another important opinion—this time not the opinion of any European gentleman or body of European gentlemen, but the opinion of Mr. Romesh Chandra Dutt. Whether his opinion would carry any weight with the official block I do not know. Nor am I concerned with it. Romesh Chandra Dutt was not a knight, he was not a member of the Executive Council, he was not even a permanent Divisional Commissioner—his was a temporary job—he was not even the Officiating Director of Land Records. From the official point of view he might well be looked upon as a very ordinary person indeed. But the people of Bengal cherish his memory with the deepest feelings of love and reverence: and I share in that feeling in common with the rest of my countrymen. Here is the opinion of Mr. Romesh Chandra Dutt—an opinion of which the Government should take note, an opinion of which my friends to the left also should kindly take note: for, Romesh Chandra Dutt was once President of the Indian National Congress, he was one of the fathers and pioneers of the National Congress, and he was associated with the growth of democratic movement in India from its very inception and commencement. Here is what he says:

"The prodigious blunder of Lord Cornwallis ought to be a living warning against all hasty legislation, especially by alien legislators. He virtually ignored all rights of the cultivators, and as if to give the zamindars the freest scope for extortion actually disestablished the canango system of his predecessor. Seldom in the annals of any country has hasty legislation been productive of effects so calamitous as the ill-conceived permanent settlement.

"On the head of Lord Cornwallis will rest the blame, that the extortion of the zamindars and their underlings has not to the present day ceased—that the ill-feeling between the ryot and his master has advanced with the advance of years. On his Lordship's head will rest the blame, that the most fertile source of revenue in a fertile country has been closed up for ever, that the extension of cultivation has increased, not the wealth of the cultivators; but of a class of idlers, the zamindars, with a two anna or one anna share of the ancestral estate." Sir, this is not the opinion of Jitendralal Bannerjee but of Romesh Chandra Dutt.

Sir, I have been sermonised very often within the last few days. One of my moral censors was Mr. J. C. Gupta, leader of the Swaraj Party sub protem. He said the other day that they were out to harmonise the rival and conflicting claims of different classes of society. Well and good! But what if the claims happen to be incurably and fundamentally antagonistic? How could you reconcile them then—by what alchemy, known to my friends, but unknown to the very gods? But Mr. Gupta, overflowing with newly acquired wisdom, told the House that there was *no* conflict of interests between zamindars and tenants, that their interests were one and identical—a hearsay first fathered by that wonderful knight of all knights, Sir Abdelkerim Ghuznavi!

Mr. PRESIDENT: Mr. Bannerjee, your time is up. I am afraid I cannot give you more time.

Babu JITENDRALAL BANNERJEE: Sir, I do not think I have ever bothered you with any request for time during the two years of my stay in this Council. But to-day, I should be very happy if you could grant me, not two minutes—that would be insufficient—but just five minutes more: and I press this request all the more, as I have made up my mind that, so far as this Tenancy business is concerned, this is the last time that I shall take part in the voting or discussion.

Mr. PRESIDENT: I shall give you couple of minutes to wind up.

Babu JITENDRALAL BANNERJEE: Sir, I know that, on this question, I am up against a very stiff proposition. The Swarajists, the Government and the zamindars what a combination, and what an alliance! This combination has proved too much for me: I feel that it is useless "ever climbing up the climbing wave!" I shall not condemn the Swaraj Party by one word of my mouth. But their deeds will condemn them. They cannot retrace their past, they cannot undo what they have done. I shall not blame them: but their past, their record, their traditions, their deeds, their achievements all these will condemn them far more than I can do with my feeble voice.

Mr. PRESIDENT: I am sorry Mr. Bannerjee I cannot allow you more time.

5-30 p.m.

Babu AMARENDRA NATH GHOSE spoke in Bengali, the English translation of which is as follows:—

"Mr. President, Sir, I want to speak a few words in this connection. We are now discussing how much the landlord will get as transfer fee when a holding, in respect of which money rent is payable, is transferred.

To come to a proper discussion about landlord's fee, we should calculate the loss and gain of both landlords and tenants acquired from the amendments of Bengal Tenancy Act made by this House till to-day.

From the time of Permanent Settlement the landlords have been enjoying the right of ownership of the soil and the tenants have been simply the users. I am not discussing now if this principle was based on right or wrong basis, but it is a fact that this is the relation of the landlords and tenants with the soil up to present time. But by the present changes made by this House—the root of long-standing judicial principle has been shakened. The unlimited power of the landlord upon the soil has been brought under the scope of the law; now it may be increased or decreased according to the strength of either of the sides in the Council. It is not only a gain but I may style it to be the 'Magna Charta' of the tenants.

According to the present Act in force in case of a transfer of a holding it is option of the landlords to accept the purchaser as his tenant or drive him out. In no case and under no circumstances the purchaser can legally claim for his sale-price. In some cases at present some good landlords return the money but it fully depends upon his grace. By the present change the tenants will get back the sale-price with some compensation. The tenants have been saved from all the troubles, which they have so long been getting from the landlords and their officers. The tenants, till now, were saved from paying the landlord's fee in case of a transfer of a part of the holding but by this change he will have to pay for it. The tenants would settle the purchased land with his landlords at his suitable time after purchase and in some cases would get favour of the landlord but by the present change he will have to pay at once as regulation fee by making the landlords fee payable at the Registrar's Office. The landlords have got more advantage than the present system.

At Hindu age the king collected rent from his subjects in a manner as a bee collects honey from flowers, that is, the king would get his dues from the people in such a fashion that the people will not be injured in any way. The zamindars of this House should remember this principle at the time of fixing the landlord's fee. It will not be at all advisable to them to kill the raiyats. If the hen is killed who will give them eggs.

I ask the zamindars of Bengal to consider another fact. When the zamindars were created by the British Government by Permanent Settlement they were then badly needed of the zamindars of Bengal. The zamindars were needed to have their revenue from a particular man on a particular day. The zamindars, that is, a class of influential men, were needed for the Government to carry on their administration; they were needed to make the British rule deep rooted in Bengal,

but those days are gone by. Their aim and objects have been fulfilled now you the zamindars are useless to the eyes of Government and so also you are useless to the eyes of the tenants. Unless you are careful from before, unless you try to earn the goodwill of the tenants, then it is almost sure that this Government will kill you not with its own hands but through the latter. At the time of this crisis of the country it will be a suicidal policy of both the landlords and tenants to fight over their common interest. Both should make concession for both; otherwise both will be ruined."

Dr. BIDHAN CHANDRA ROY: Sir, I never intended to take part in the discussion of the Tenancy legislation, but the speech of Mr. Jitendralal Bannerjee forces me to make a few observations at this stage. I listened to his speech with the greatest attention and his activities reminded me of a particular species of created beings who under certain circumstances attacks everybody everywhere. He has attacked Mr Sachse let him be careful; he has attacked Sir Provash Chunder Mitter who is safely entrenched in his Treasury chair; he has attacked my gallant friend, Mr. Bijoy Prasad Singh Roy, who well knows how to defend himself. But he has attacked the Swaraj Party as well. He has said that the Swaraj Party will have to stand by its own achievements. May I remind Mr. Bannerjee that if he really had any difficulty about the point of view which the Congress Party has accepted, he then as a member of that party, on whose ticket he has come to this Council, should have produced his reasons before the party and should have also tried to get the party agree to his views, or in the alternative Mr. Bannerjee, as an honest person, should have resigned his seat in this Council (Hear, hear!) instead of attacking the party. I do not deny that it is yet time for him to resign on this issue. Let him go back to his constituency and say to his voters "I am a tenant's man and have left the Congress Party, because that party has not done what it should have done." Let him come back to the Council on that ticket.

I do not deny that the problem of Tenancy legislation is a very complicated one. I do not deny that we have had great difficulties to compromise the two different points of view at our party meetings. I do not deny that this legislation aims practically at bringing together persons whose interests are affected greatly by this legislation, and whose source of bread and butter will be affected by the decision of this Council. Therefore, we have discussed times without number every individual amendment that has been tabled. We have discussed, we have differed and sometimes some of us have been defeated in the party meeting, but we have never created a scene after coming to the Council and while belonging to the Congress Party we have not said, "I belong to the tenants' party and therefore I

cannot vote with the Congress Party." The Congress Party will face the constituency in future elections with complacence and if it is the opinion of the country that the Congress Party should cease to exist and disappear, this party will take note of that fact with equanimity and retire taking that as the mandate of the people. Believing as they do, that it is the mandate of the people which brought them here, the Congress Party feel that unless they are not prepared to tune themselves to the wishes of the people, the people will themselves declare against the party. Therefore, Sir, I feel that in a matter of this character it is not desirable to be too dogmatic one way or the other. We have felt that the legislation that we have taken up may be good or bad or indifferent. We have felt that perhaps this is not the time nor the opportune moment of bringing in a legislation of this character when there are other more important constitutional changes going on. We have also felt that this matter should have been discussed and an adjustment arrived at not on the floor of this House but outside between the zamindars and the tenants. But since this legislation is before us, we have got to decide somehow or other. I say on behalf of the Congress Party that every matter that has come up before this Council as amendments, we have discussed every one of them as seriously as we could looking at it from every angle of vision. We have consulted all points of view. I refute the charge that has been levelled against us that we have been mere tools in the hands of the zamindars' party.

Maulvi ABUL KASEM: Sir, in discussing this question various side issues have been raised. My friend who spoke immediately before me suggested that Mr. Jitendralal Bannerjee should resign his seat in this Council.....

Mr. PRESIDENT: Please resume your seat. I think I should not allow you or any other member to spin out the matter. I did not stop Mr. Jitendralal Bannerjee, because his speech, although it was not, strictly speaking, relevant, or to the point, was undoubtedly illuminating. The House wanted to hear it and I did not like to destroy the flow of his eloquence. Unfortunately, he attacked the Swaraj Party and was caught in the trap of his words. I could not, therefore, help allowing the Deputy Leader of the Swaraj Party in the absence of his leader, to reply. The matter should end there. It is now incumbent on me to warn the members to strictly confine themselves to the subject under discussion.

Babu JITENDRALAL BANNERJEE: On a point of personal explanation. I do not care to defend myself, but may I remind you that there was not one word of condemnation in my speech so far as the Swaraj Party was concerned.

Mr. PRESIDENT: That is a matter of opinion.

Maulvi ABUL KASEM: This is one of the most important legislations that have been before this House in recent time. We have been told that some of us thought that this legislation should not have been brought at this time when more important matters were engaging the attention of the country. I submit that in a country which is more or less mainly and purely agricultural and where agriculture is the chief industry there can be nothing more important than the question of the cultivators and the landlords. The question of the political situation of the country, the gratification of their political ambition, and may I say the vanity of the politically minded people loom largely before them. As regards this piece of legislation, I think it is desirable that those of us who are here as representatives of the people, should they like and I think it is better for all of us, should resign their seats in this Council before this legislation is passed and come back, if possible, re-elected with a clear mind. That is the proposition I submit for the consideration of the members of this House.

Babu AMULYA CHANDRA DATTA: It seems that the proposal under discussion smacks of a spirit of bargaining not befitting either the Government or the landlords. So far as the proposal of fixing the salami on rent basis is concerned, I doubt whether there is any justification for it. Though my experience is limited in this matter, I may say without fear of contradiction that there is no place in Bengal where the salami payable to the zamindar in case of transfer is fixed at the rent basis. Just a minute ago I asked my friend, Mr. Sârat Chandra Bose, who has got a very large experience in these matters, and he has assured me that so far as his experience goes he has not heard of any place where salami is fixed on rent basis. You know, Sir, that in Bengal rent is not uniform. The rate of rent varies in different districts, so that what is true of one district is not true of another. You also know that the greater the rent, the less value of the property, and I can quote instances of districts in which the rent was fixed long long ago, although the fertility of the soil has deteriorated and the value of the property has gone down since. In such cases it will operate very harshly upon the tenants if the salami is fixed at rent basis. I can speak from my personal experience of Hooghly and Howrah where the rent varies from Rs. 3 to Rs. 5 and the average value of land is not more than Rs. 50 or Rs. 60. In such cases if this proposal be given effect to, it will be very prejudicial to the interests of the tenants. Now, Sir, I was under the impression that the understanding was that Government would not press this proposal of the rent basis when there was that compromise yesterday about the percentage basis. Being under

the impression that the percentage basis would obtain everywhere, I may say that, speaking for myself and on behalf of some of my friends on this side of the House, we consented to the 20 per cent. basis. I might tell the House that it was not without a deep sense of injustice to the tenants and not without some violence to our feeling that we agreed to the 20 per cent. basis. (Hear, hear!) Khan Bahadur Maulvi Azizul Haque did me the honour yesterday of referring to the opinion which I gave about the last Bill at the instance of the District Judge of Hooghly I may assure my friend that I stick to that opinion even now, though I voted for 20 per cent. I did so only because I was forced by circumstances. It was not due to any party mandate but because I had reasons to believe.....

Mr. PRESIDENT: We are not concerned with those circumstances and the House is not at all interested in what you are saying now—it is really of a personal character.

Babu AMULYA CHANDRA DATTA: Sir, what I was submitting is this.

Mr. PRESIDENT: Come to the amendment please.

Babu AMULYA CHANDRA DATTA: I shall confine myself to the amendment. I was under the impression that the alternative rent basis would not be pressed. On that impression I gave my consent to the 20 per cent. basis. That is what I was submitting to the House, but if it be not relevant I must respect your opinion, Sir. I would make an appeal to Government to withdraw this alternative proposal of fixing the salami at the rent basis. I have placed the circumstances before the House and I hope I have been able to satisfy the House as to why the proposal, if carried, would be detrimental to the best interests of the poor peasantry of Bengal.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, these numerous amendments have been discussed very fully. The relevant points in these amendments are really two—one, the percentage of landlord's fee, and the other, the number of years' rental which ought to be paid: and there is also a third point, viz., whether the word "greater" or "less" should be used with reference to the percentage of landlord's fee, and the number of years' rental. As regards the percentage of landlord's fee which should be paid to the landlords, the point was discussed very fully yesterday, and during the debate to-day we had not only repetitions of the arguments advanced yesterday but we had a good deal of irrelevant matters introduced. I will not touch most of the irrelevant points nor am I going to refer to the discussion as to the proper percentage of landlord's fee,

because that had been fully discussed yesterday, and after the decision arrived at by the House yesterday, the conclusion should follow that the percentage which the House should accept should be the same as it accepted yesterday. As I am not anxious to take up the time of the Council unnecessarily, I would not enter into a discussion of that question.

The second relevant matter, which arises in regard to these amendments, is the question of the number of years' rental but that also is not of very great importance, for as Mr. Sachse has pointed out, that when the rental is low the value is likely to be high and when the rental is high the value is likely to be low; and as our proposal is whichever is higher the number of years' rental is unimportant. The provision of a number of years' rental has been introduced not with the object of helping any particular class, but with the object of providing for an automatic adjustment. Now, my friend, Babu Amulya Chandra Datta, may not be aware, but it is a fact, that this practice prevails in different places in Bengal. Whatever is vouched for by his knowledge or that of Mr. Bose's, is entitled to every respect and every weight but the practice in other parts of Bengal may not be within their knowledge—our Settlement records show and the experience of other people show that this practice is not uncommon to many places. We are legislating for the whole of Bengal; and therefore we must take into consideration not merely the experience in a particular district or two districts or portion of a district but the experience of the whole province. It is necessary, therefore, to have the provision; and as a necessary consequence of what the House decided yesterday, we are quite willing to reduce six to five times and that is the subject matter of Amendment Nos. 406 and 407. Either of these amendments, we on the Government benches are willing to accept. Now, these are the relevant points that have been discussed. The other points are not more or less relevant. But before I proceed to the other points, I would like to refer to one thing which is relevant with regard to the points discussed, and that is that the Bill provides for a certainty of title, and as there will be a certainty of title, that will mean an automatic rise in the price. Now, Sir, amongst the multitude of irrelevant points that were discussed, one point was pressed with great eloquence and, if I may say so without offence, with great vehemence by Mr. Jitendralal Bannerjee. But, Sir, Mr. Bannerjee is never happier than when he can make a good speech. He is never happier than when he can attack somebody, friend or foe. I take it, therefore, that when Mr. Bannerjee delivered his onslaught on every person concerned, he was in that happy mood. Therefore, Sir, inebriated as he was with the verbosity of his eloquence he forgot for the moment that the point on which I spoke the other day was not whether the Permanent Settlement was good or bad, but that the

question of the Permanent Settlement was not relevant for the purpose of the discussion of the Bengal Tenancy (Amendment) Bill. There may be other occasions for discussing the question of the permanent Settlement, but this is not the occasion. Is there any single clause in the Bill as printed in this book where the question of the repeal or continuance of the Permanent Settlement Regulation is the subject-matter of amendment? If that is not so, it should have appeared to the meanest intelligence—and Mr. Bannerjee is a gentleman of great intelligence and ability—that his discussion of that question was irrelevant. But some people have a bee in their bonnet and the Permanent Settlement, I can well understand, is a bee in the bonnet of Mr. Bannerjee. That subject was introduced quite irrelevantly another day and I disposed of it by my reply on that day. First of all, the discussion of merits or demerits of the Permanent Settlement is not relevant, secondly it is a question for academic discussion and not one for practical legislators, because the ramifications of the effect of the Permanent Settlement have driven deep to every class of society—the zamindar, the tenure-holder, the raiyat and the under-raiyat are all affected to-day by the Permanent Settlement. Therefore, it is not practical politics and that is what I said the other day. Every child knows that one legislation can be undone by another legislation. For that proposition you do not require the erudition of a learned professor or the example of Gladstone or any other great man. As regards his point of attack in comparing me with Mr. Gladstone, I always feel that I am an humble man of limited abilities. I never arrogate to myself that there is anything common between myself and Mr. Gladstone; but perhaps Mr. Bannerjee could not resist the temptation of that analogy, because he thought that he could thereby raise a debating point to hit a friend, and he is never happy unless he can hit somebody, a friend or foe. Therefore, I did not take the present attack seriously. I take the attack in quite a sporting spirit and I am sure, Sir, in spite of that attack, I will shake him by the hand with the same alacrity as I have done in the past and hope to do in future. (Hear, hear!) But, Sir, I would say this to the House that the less we talk about irrelevant matters in future, the less we talk about the general issues with the Permanent Settlement, the less we talk about the supposed iniquities of the landlord, the better it will be for the immediate business before us. We are concerned with certain definite proposals. With regard to these definite proposals there are about 1,400 definite amendments. Even if we confine ourselves to the definite issues involved in these amendments it will take a good deal of time for this House to finish them. I may tell you, Sir, that many members are anxious to finish the discussion soon. If that be so, the remedy lies in their hands. With this appeal to my friends on the tenant benches and other benches, I would like to resume my seat (A VOICE:

Can opponents be friends?) I think opponents can certainly be friends: I think so; but if anybody thinks that opponents must be enemies, let him think like that, it only shows the narrowness of his outlook.

In conclusion, may I draw your attention to the fact that this question was debated partly yesterday, and it has been amply debated to-day? If you think, Sir, that the debate will not suffer, then I would ask you to put it to the vote.

Mr. A. K. FAZL-UL HUQ: Sir, we could not catch the Hon'ble Member's argument. As he is asking you to close the debate, may I ask him what his proposal is?

The Hon'ble Sir PROVASH CHUNDER MITTER: I am prepared to accept either of the two amendments Nos. 406 and 407.

Mr. A. K. FAZL-UL HUQ: On a point of order, Sir. I understood that the question we were discussing was whether the word in the amendment should be "greater" or "less."

The Hon'ble Sir PROVASH CHUNDER MITTER: If my friends are under a misapprehension, may I explain the attitude of Government? As regards "greater" or "less" we stick to our Bill. As regards "five" or "six" times, we are prepared to accept "five" because that follows from what we decided yesterday.

Mr. PRESIDENT: I find that amendment No. 407 should be put first. The Hon'ble Member in charge of the Bill wanted to have either amendment No. 406 or No. 407, but the former touches clauses (*d*) and (*e*) of proposed section 26D, which the House have not been able to discuss to-day. So, I shall put amendment No. 407 first.

The motion that in clause 23, in proposed section 26D (*b*), in lines 3 and 4, for the words "twenty-five per cent." and in line 6, for the words "six times the annual rent," the words "twenty per cent." and "five times the annual rent," respectively, shall be substituted, was then put and a division taken with the following result:—

AYES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Premotha Nath.
Banerjee, Mr. A. C.
Basu, Babu Basi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Bose, Mr. S. C.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.

Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Datta, Babu Amulya Chandra.
Dowding, Mr. T. W.
Dutt, Babu Saral Kumar.
Eddis, Mr. A. McD.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Khan, Mr. Razaur Rahman.
Lala, Babu Sareda Kripa.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Maharaja Jogindra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Ray, Dr. Sidhan Chandra.
Roy, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Thomas, Mr. H. W.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazlul.
Hussain, Maulvi Latafat.
Karim, Maulvi Abdul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rehman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Mr. Abdool Razak Hajee Abdool.

The Ayes being 84 and the Noes 23, the motion was carried.

Mr. PRESIDENT: I am told that Mr. Nelson passed the tellers in both the lobbies; his vote will, therefore, be expunged.

Now that amendment No. 407 has been carried, all the amendments that were put with it in the same group, excepting amendments Nos. 439, 440, and 441 fail—of these amendment No. 440 should be put first.

The motion that in clause 23, in proposed section 23D (*b*), for the words "whichever is greater," the words "whichever is less" shall be substituted, was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed M.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mahan.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Ramee Chandra.
Banerjee, Babu Pramotha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Basu, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Bose, Mr. S. C.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jagindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Eddis, Mr. A. McD.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hopkyns, Mr. W. S.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Khan, Mr. Razaur Rahman.
Lala, Babu Sareda Kripa.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Momin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Naskar, Babu Ham Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Maharaja Jogindra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Nalinikanjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Thomas, Mr. N. W.

The Ayes being 18 and the Noes 78, the motion was lost.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I beg formally to move that in clause 23, clause (*c*) of the proposed section 26D be omitted.

Mr. PRESIDENT: Now, I call upon Maulvi Asimuddin Ahamad to move the first part of his amendment No. 452.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, in the absence of Maulvi Asimuddin Ahmad, and with your permission, I beg to move formally the first part of amendment No. 452, viz., that in clause 23, proposed section 26D (*c*) shall be omitted.

The motion was then put and lost.

The following motion was called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that in clause 23, in the proposed section 26D (*c*), before the word "exchanged," the word "*bona fide*" shall be inserted.

Mr. PRESIDENT: I now propose to take up amendments Nos. 449, 450, 451, and 453 (second part) together.

The following motion was called but not moved:—

Mr. KHWAJA NAZIMUDDIN to move that in clause 23, in the proposed section 26D, for clause (*c*), the following be substituted, namely:—

"(*c*) In the case of transfer by exchange of a holding or a portion or share of a holding, to five per cent. of the value thereof as set forth in the instrument of transfer payable by each party."

Maulvi TAMIZUDDIN KHAN: Sir, I beg to move formally that in clause 23, in proposed section 26D, for clause (*c*), the following shall be substituted, namely:—

"(*c*) in the case of a transfer by exchange of a holding or a portion or share of a holding to one and a half times the annual rent of the holding or of the portion or share transferred to each party to the transfer payable by each party."

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 23, in the proposed section 26D, for clause (*c*), the following shall be substituted, namely:—

"(*c*) in the case of a transfer by exchange of a holding or a portion or share of a holding to five per cent. of the value thereof as set forth in the instrument of transfer or one and a half times the annual rent of the holding or of the portion or share transferred to each party to the transfer, whichever is greater, payable by each party."

This amendment is in respect of clause (c) of the proposed section 26D of the Bill. This refers to the transfer fee which is to be given to the landlord in the case of exchange of occupancy holdings. Now, Sir, in the case of transfer of holdings by sale, it has already been decided that the landlords should get 20 per cent. on the purchase money or five times the annual rent. Now, the question is what is to be the landlord's fee in respect of, the exchange of occupancy holdings. There is vast difference between these two classes of transfer namely, whereas in the case of transfer by sale the transferee has to pay a good amount as consideration money, in the case of exchange nobody has to pay anything. It seems really very strange that the landlord has to get something even when there is no payment of money by one party to another. But if I say that the landlords should not get any fee, at all in the case of exchange, my cry, as I have already said, will be a cry in the wilderness. I therefore did not venture to say anything in support of Khan Bahadur Azizul Haque's proposal to omit clause (c) altogether; but I beg to say that if the landlord is to get any fee in the case of transfer by exchange, it should be very very small. Government itself has not ventured in this case to propose a fee of 25 per cent.: it has proposed 12½ per cent. I think 12½ per cent. is also monstrous. I submit 12½ per cent. in the case of transfer by exchange is to be paid by each party to the transfer, so it will come up to 25 per cent. as in the case of transfer by sale. Therefore, the proposal of Government to fix the landlord's fee in the case of transfer by exchange at 12½ per cent. of the value cannot be supported. I should, therefore like to recommend to the House my amendment which says that landlord should get either 5 per cent. of the value, or one and a half times the annual rent. As the House has already rejected the proposal to base the landlord's fee on a rent-basis, I hope the House will be willing to accept this proposal of mine, namely, that the landlord should get either 5 per cent. of the value of the holding, or in the alternative one and a half times the annual rent as proposed by Government. I hope this reasonable limit would be accepted by the House.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir we are willing to accept the principle of the amendment, but it may require some redrafting.

Mr. PRESIDENT: I have already placed several amendments in one group and told the House that I would have all of them moved and discussed together. So, let these be moved first. It will be open to the Hon'ble Member in charge of the Bill to suggest hereafter any change that he wants to be made in any of the amendments by its mover to make it acceptable to Government.

Mr. W. H. NELSON: Sir, it would possibly save time to let the House know what we are prepared to accept. As a matter of fact, 12½ is a misprint in the Bill for 6¼, and now that we have accepted 20 per cent. and five times the annual rent, these figures in the case of exchange become 5 per cent. and 1¼ times the annual rent.

Mr. PRESIDENT: This statement could be made after all the amendments had been moved. That is what I meant.

The following motion was called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that in clause 23, in the proposed section 26D (c), for the figures "12½" the figures "25" and for the words "one and a half" the word "three" shall be substituted.

Mr. M. C. GHOSH: May I suggest, Sir, that amendment No. 451 should now be put to the vote?

Mr. PRESIDENT: I do not think I can do that, Mr. Ghosh, for reasons I have already given.

Dr. BIDHAN CHANDRA ROY: May I request you, Sir, to let us know what Mr. Nelson has proposed?

Mr. W. H. NELSON: Sir, we will accept amendment No. 451 with this change that the word "quarter" should be substituted for the word "half" in the third line. This follows from the change of 25 to 20 per cent. and from the change of five times in place of six times in the case of annual rent.

Mr. SARAT C. BASU: Mr. President, Sir, may I rise on a point of information? My submission is that after the Government have accepted 20 per cent. in the case of sale, it is intelligible that in the case of exchange it may be half that figure, because two different parties pay half and half to make up the full, for exchange is a double sale—it is a mutual sale.

6-30 p.m.

The Hon'ble Sir PROVASH CHUNDER MITTER: I shall explain the position of Government. Government's proposals are that in the case of exchange the fee shall amount to half of that in the case of sale. Therefore, it will be half of 20, that is 10 and half of 10, that is 5.

As regards the rental, the same procedure will be followed, viz., half of 5, that is 2½, and half of 2½, that is 1¼. We have decided on half, because we want to encourage consolidation of holdings.

Maulvi NURUL HUQ CHAUDHURI: I move formally that in clause 23, in the proposed section 26D (*c*), the words "or a portion or share of a holding" and the words "or of the portion or share" shall be omitted.

The following amendments were called but not moved:—

Mr. KIRAN SANKAR ROY and Dr. KUMUD SANKAR RAY to move that in clause 23, in the proposed section 26D (*c*),—

(*a*) in line 2, after the words "share of a holding," the letter within brackets "(*i*)" be inserted;

(*b*) in lines 4 and 5, for the words "one and a half," the word "three" be substituted; and

(*c*) the following be added at the end:—

"(*i*) if both the lands exchanged happen to be under the same landlord;

(*ii*) if the lands exchanged happen to be under different landlords, twenty-five per cent. of the value or six times the annual rent of the holding or of the portion or share transferred to each party to the transfer, whichever is greater, payable by each party."

Babu JITENDRALAL BANNERJEE to move that in clause 23, in the proposed section 26D (*c*), lines 3 to 8, for the words and figures beginning with "to 12½ per cent." and ending with "payable by each party," the following shall be substituted, namely:—

"to 2½ per cent. of the value thereof as set forth in the instrument of transfer or to one-half the annual rent of the holding or of the portion or share transferred to each party to the transfer, whichever would be less, payable by each party."

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 23, proposed section 26D, clause (*c*)—

(*i*) in lines 3 and 4, the words "to 12½ per cent. of the value thereof as set forth in the instrument of transfer or" shall be omitted;

(*ii*) in lines 4 and 5, for the words "one and a half times the annual rent," the words "three times the annual rent" shall be substituted; and

(*iii*) in lines 7 and 8, the words "whichever is greater" shall be omitted.

Maulvi KASIRUDDIN AHAMAD: I move that in clause 23, in proposed section 26D (*c*), in lines 3 and 4, the figures and words "12½ per cent. of the value thereof as set forth in the instrument of transfer or" and in lines 7 and 8 the words "whichever is greater" shall be omitted.

There should be no provision for salami at all in the case of exchange because the tenants practically remain the same. There is no question of consideration money, nor is there any necessity of mutation in the zamindar's sharista. So the zamindar has nothing to do with ordinary exchange of lands. I therefore propose that no salami should be imposed in the case of exchange.

Adjournment.

The Council was then adjourned till 10-30 a.m. on Saturday, the 25th of August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Saturday, the 25th August, 1928, at 10-30 a.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURY, of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, Minister, and 95 nominated and elected members.

Oath.

The following member took an oath of his allegiance to the Crown:—

Mr. R. N. GILCHRIST.

GOVERNMENT BILL.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

The following amendments were called but not moved:—

Maulvi KADER BAKSH to move that in clause 23, in the proposed section 26D (*c*), lines 3 and 4, the figures and words "12½ per cent. of the value thereof as set forth in the instrument of transfer or" shall be omitted.

Babu ROMES CHANDRA BACCHI to move that in clause 23, in the proposed section 26D (*c*), line 3, for the figures and words "12½ per cent.," the words "ten per cent." shall be substituted.

Babu AMULYA CHANDRA DATTA to move that in clause 23, in the proposed section 26D (*c*), for the words "12½ per cent." the words "6¼ per cent." be substituted, and the words beginning with "or one and a half times" up to the words "payable by each party" be omitted.

Mr. W. H. NELSON: I beg to move the amendment which stands in my name with certain changes in figures which are necessitated by the change from 25 per cent. to 20 per cent. I move that in clause 23

in the proposed section 26D (*c*), line 3, for the figures and words "12½ per cent." the figures and words "5 per cent." and for the words "1½ times" the words "1¼ times" be substituted.

Mr. D. N. ROY: May I know what is the exact amendment which Mr. Nelson has moved?

Mr. PRESIDENT: That will be read out to the House again at the right moment.

The following amendments were called but not moved:—

Mr. SYED MD. ATIQULLAH and Babu AMARENDRA NATH GHOSE to move that in clause 23, in the proposed section 26D (*c*), in line 3, for the figures and words "12½ per cent.," the figure and words "6 per cent." shall be substituted.

Mr. SYED MD. ATIQULLAH to move that in clause 23, in proposed section 26D (*c*), for the figures and words from "12½ per cent." to "transfer," the words "Rupee one only" shall be substituted.

Khan Bahadur K. G. M. FAROQUI to move that in clause 23, in the proposed section 26D (*c*),—

(*a*) in line 3, for the figures and words "12½ per cent." the words "two per cent." shall be substituted, and

(*b*) the following shall be omitted, namely:—

"or one and a half times the annual rent of the holding or of the portion or share transferred to each party to the transfer, whichever is greater, payable by each party."

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 23, in the proposed section 26D (*c*)—

(*i*) in line 3 for the figures and words "12½ per cent." the figure and words "2 per cent.";

(*ii*) in lines 4 and 5 for the words "one and a half times" the words "one time";

(*iii*) in line 8 for the word "greater" the word "less" shall be substituted.

Babu NAGENDRA NARAYAN RAY to move that in clause 23, in the proposed section 26D (*c*), for the figures and words "12½ per cent." the words "one per cent." shall be substituted.

Maulvi NURUL HUQ CHAUDHURI to move that in section 26D, in clause (*c*), for the numerals and the words "12½ per cent." the words "one per cent." shall be substituted.

Maulvi SYED NAUSHER ALI to move that in clause 23, in clause (*c*) of the proposed section 26D for the figures "12½" the figure "½" be substituted.

Maulvi ASIMUDDIN AHAMAD to move that in clause 23 in proposed section 26D (*c*) for "to 12½ per cent." the words "no landlord's fee is to be paid by the parties" and the words beginning with "of the notice" and ending with "by each party" shall be omitted.

Mr. SYED MD. ATIQULLAH to move that in clause 23 in the proposed section 26D (*c*), lines 4 to 8, the words beginning with "or one and a half times" and ending with "greater" shall be omitted.

Maulvi NURUL HUQ CHAUDHURI to move that in clause 23 in the proposed section 26D (*c*), lines 4 and 5, for the words "one and a half times" the words "five per cent. of" shall be substituted.

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 23 in the proposed section 26D (*c*)—

(*i*) in lines 4 and 5 for the words "one and a half times" the words "three times" shall be substituted, and

(*ii*) after the word "party" in the last line, the words "to his landlord" shall be added.

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 23, in the proposed section 26D (*c*)—

(*1*) in lines 4 and 5 for the words "one and a half" the word "three" shall be substituted;

(*2*) at the end of the same clause (*c*) the following proviso shall be added, namely: "Provided that the lands forming the subject matter of exchange shall be within the same estate or tenure and under the same landlord."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I beg to move that in clause 23, in the proposed section 26D (*c*), lines 4 and 5, for the words "One and a half," the words "Two and a half" shall be substituted.

The only reason for my moving this amendment is this: That we all along calculated on the basis of 25 per cent. and 6 times and that

in case of exchange it should be half. Here we find 12½ per cent. which is correct and 1½ times which is a mistake as it should be 3. But now that we have agreed to 20 per cent. and 5 times, I submit that instead of 3 it should be 2½.

The following amendment was called but not moved:—

Maulvi SYED NAUSHER ALI to move that in clause 23 in clause (*c*) of the proposed section 26D for the words "one and a half times" the words "half of" be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Maulvi Nurul Huq Chaudhuri and with your permission, I beg to move that in clause 23, in the proposed section 26D (*c*), last line, for the word "greater," the word "less" shall be substituted.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): If I am permitted to explain the position, perhaps it will save the time of the Council. The House will remember that Maulvi Tamizuddin Khan moved his amendment (No. 451) yesterday where he proposed that 5 per cent. of the value and 1½ times the annual rent of the holding, whichever is greater, be substituted for the provision in the Bill; we from the Government benches pointed out that as the original provision of 25 per cent. had been reduced to 20 per cent. and the provision of 6 times the rental had been reduced to 5 times the rental, there should be consequent changes. Another thing which I also explained was that our intention was to encourage exchanges and to make suitable provision for that purpose. When the proposal was 25 per cent., we intended to have 12½ per cent. and for 6 times the rental we intended to have 3 times. Half of all that was to be paid by each of the exchanging parties. Therefore, when it was 12½, 6¼ per cent. should have ben paid by each of the exchanging parties.

Now the House has decided on 20 per cent. and 5 times the rental, and Mr. Nelson has asked the leave of the House to amend section 26D (*c*) in the following manner, namely, that in the proposed section 26D (*c*) for the figures and words "12½ per cent." the figure and words "5 per cent." and for the words "1½ times" the words "1¼ times" shall be substituted. If the House gives its permission to move this, well and good. If not, we may select one of Maulvi Tamizuddin Khan's amendments and support it, but I hope the House will give this permission.

Mr. J. M. SEN GUPTA: We on this side of the House agree that so far as the proposal of Maulvi Tamizuddin Khan is concerned we support it, unless the proposal of the Hon'ble Member is agreed to, that

is to say, unless Mr. Nelson's new amendment is accepted. The difference between the new amendment of Mr. Nelson and that of Maulvi Tamizuddin Khan is that while the latter proposed 1½ times, the former proposes 1¼ times.

Mr. M. ASHRAF ALI KHAN CHAUDHURI: In supporting the amendment of Maulvi Kasiruddin Ahamad, I beg to say that the landlords have no justification whatever to ask for any salami when there is a mutual transfer, and for this reason the tenants will be the same, and it is unlike the case of a new man coming in.

Khan Bahadur MUHAMMAD ABDUL MUMIN: May I just correct the hon'ble member? The tenants will not be the same.

Mr. M. ASHRAF ALI KHAN CHAUDHURI: Why not? It will be a mutual transfer and the tenants will be the same. The new tenants will be of the same village, and they are only mutually transferring their own holdings. Supposing there are two houses belonging to one landlord, the tenants of one house want to go to the other after mutual agreement, that is to say, one tenant living in house No. 33 goes to No. 34 and the one living in 34 goes to 33. I think that is the correct position. If not, I wish to be corrected now.

The Hon'ble Sir PROVASH CHUNDER MITTER: As the member wants to be corrected, may I, with your leave, Sir, point out to him that the only difference between the proposal of Maulvi Tamizuddin Khan and that of ours is this: As regards 5 per cent. we are agreed. Maulvi Tamizuddin Khan wants 1½ times the rent, but we suggest it should be 1¼. That is more favourable to the tenants; that's all. What is contemplated here is exchange of lands belonging to different landlords, whereas Mr. Ashraf Ali is under a misapprehension. Our amendment is more pro-tenant than that of Maulvi Tamizuddin Khan.

Mr. M. ASHRAF ALI KHAN CHAUDHURI: I am supporting Maulvi Kasiruddin Ahamad's amendment (No. 458) regarding mutual transfer, where he has asked that 12½ per cent. of the value thereof as set forth in the instrument of transfer shall be omitted.

The Hon'ble Sir PROVASH CHUNDER MITTER: Perhaps Mr. Ashraf Ali thinks that both are under the same landlord. That is not our proposal, but there are other amendments to limit it to the same landlord, and we propose to oppose them. It is not a question of same landlord, but different landlords and in different estates.

Mr. M. ASHRAF ALI KHAN CHAUDHURI: How does that arise? I want information on this point, for I do not want to waste the time of the Council. What I understand is that if there are two

tenants in one village or there might be a tenant in another village who has a holding in the same village under the same landlord. Is that not the position?

Mr. F. A. SACHSE: No.

Maulvi TAMIZUDDIN KHAN: So far as my amendment is concerned, I am prepared to accept the Government amendment of 1¼ instead of 1½.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I would like to say that a salami of 5 per cent. or 1¼ times as proposed by Mr. Nelson is quite all right if you take exchanges of contiguous holdings; but nothing in the Bill says where the exchange is to be. A land in Burdwan might be exchanged for a land in Noakhali, and a land of 100 bighas might be exchanged for one cottah in another place. There is no limit to that; besides, as set forth in the instrument of transfer, any land might be put down for any amount, which is very vague. Unless these points are cleared up by Government, I do not see how we can proceed.

The Hon'ble Sir PROVASH CHUNDER MITTER: I may at once tell the House that we intend to stand by our Bill, but there is one point we are prepared to consider and that is to limit this exchange to contiguous plots so as to improve agricultural conditions. About that we have not come to any decision. So far as the amendments want that the exchange must be in the cases where the landlord is the same or the estate the same, I must say that as at present advised we must oppose them.

Mr. PRESIDENT: It will serve no useful purpose to discuss this matter is this fashion. I must put the amendments as they stand on paper. I have got sufficient indication that amendment No. 464 is liked by many members. So I am going to put that first.

The motion that in clause 23 in the proposed section 26D (*c*), line 3, for the figures and words "12½ per cent." the figure and words "5 per cent." and for the figures and word "1½ times" the figures and word "1¼ times" shall be substituted was then put and agreed to.

The motions of Maharaja Shashi Kanta Acharjya Chaudhuri, of Muktagacha, and Khan Bahadur Maulvi Azizul Haque were not put, as they were covered by the foregoing decision of the Council.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I beg to move that in clause 23 after the proposed section 26D (*c*) the following proviso shall be added, namely:—

"Provided that the lands forming the subject matter of exchange, should be within the same estate or tenure and under the same landlord."

I have already said that the exchange should be limited to certain things, and I understand Sir Provash Chunder Mitter is going to limit this exchange to contiguous plots. So far as the present amendment is concerned, I accept that; but with regard to the price, the provision in the Bill is very vague.

The Hon'ble Sir PROVASH CHUNDER MITTER: We must oppose the amendment as it stands, as we are not prepared to limit the exchange to the same landlord or the same estate. We may put in a suitable amendment the effect of which will be that exchanges will be permitted only with regard to contiguous lands, irrespective of their being held under the same landlord or in the same estate, but that will require a fresh draft, and if my assurance be accepted and if the hon'ble member will withdraw his amendment with your permission, we shall put it off till Monday.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I beg to withdraw my motion.

The motion was then, by leave of the Council, withdrawn.

Khan Bahadur Maulvi AZIZUL HAQUE: We might make a statement so far as we are concerned. We may be permitted to record that we stick to the original provisions in the Bill and object to anything which takes away the right of exchange, whether the lands are contiguous or not. The Hon'ble the Revenue Member has given an assurance to the mover of this amendment that he will bring in a fresh measure or something to this effect, but we on this side are opposed to anything which will whittle down the right of the tenants.

The Hon'ble Sir PROVASH CHUNDER MITTER: I may assure the House that any amendment which I may bring afterwards can only be moved with the concurrence of all sections in this House. If the amendment does not meet with the approval of the House, certainly we shall not bring it.

Mr. PRESIDENT: The matter is not before the House and need not be discussed at this stage.

Maulvi ASIMUDDIN AHAMAD: I beg to move that in clause 23, clause (*d*) of the proposed section 26D be omitted.

He spoke in Bengali in support of his amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: The question has been fully discussed, and I formally oppose it.

The motion was then put and a division taken with the followin result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Prometha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hagg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. P. E.
Khan, Babu Debendra Lal.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mittar, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Momin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Ham Chandra.
Nelson, Mr. W. H.
Pal Chaudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Dr. Bidhan Chandra.
Roy, Mr. Bijay Prasad Singh.
Roy, Mr. D. N.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. N. E.

The Ayes being 13 and the Noes 53, the motion was lost.

Maulvi NURUL HUQ CHAUDHURI: I beg to move that in clause 23, in the proposed section 26D(*d*), line 1, after the word "gift" the words "other than a gift under the Muhammadan Law" shall be inserted.

The Hon'ble Sir PROVASH CHUNDER MITTER: May I, Sir, with your permission, make a suggestion? I find that there are a number of amendments about gifts and bequests for religious and charitable purposes. Subject to your approval, and if my Muhammadan friends will agree, I suggest that all these amendments—I will presently give their numbers—be taken up on Monday. I would like to meet my Muhammadan friends and hope to come to some agreement.

Mr. PRESIDENT: I have no objection. I shall have one discussion on amendments Nos. 485, 486 and 487 and 490 to 512. I will, of course, put them separately.

Maulvi TAMIZUDDIN KHAN: As I intend to make one speech in respect of all the three amendments, I should like to do that after I have moved all the three amendments.

Khan Bahadur Maulvi AZIZUL HAQUE: I heard the Hon'ble Member in charge to make some conditional offer, but I think that Government must have surely come to some decision in this matter.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, with regard to this amendment I wish to make a statement, with your permission. This amendment we must oppose, but we may not have any objection to accepting amendment No. 518 which relates to bequests, and in that amendment the fee is sought to be reduced from 20 to 10 per cent. About gifts, I must oppose. But if my friends will withdraw this amendment, I shall be prepared to accept No. 518. If they do not, I may tell them that we have not an open mind on this question, but in order to save the time of the House and in order to come to some understanding, if possible, I have suggested the postponement.

Khan Bahadur Maulvi AZIZUL HAQUE: I am sorry, Sir, that we have not been able to follow the Hon'ble Member's argument. Surely, the Government must have come to a decision in regard to both bequests and gifts; but why does he make this conditional offer?

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I will explain by saying that Government's decision is that both gifts and bequests should be opposed on the merits; but as I find that a section of the House have a feeling over the matter, we are quite willing to give in on the question of bequests. Our motive is to placate a section of the House and if that section want it, I am willing to accept the amendment regarding bequests, or else we stand by our decision.

Mr. PRESIDENT: I think the best thing for the mover to do is to say quite clearly whether he accepts the assurance of the Hon'ble Member in charge, or insists upon pressing his amendment.

Maulvi TAMIZUDDIN KHAN: Sir, I am sorry I cannot accept the assurance of the Hon'ble Member in charge. I, formally move all the three amendments, namely:—

"That in clause 23 in the proposed section 26D, for clause (*d*), the following shall be substituted namely: '(*d*) in the case of a transfer by gift of a holding or a portion or share of a holding, to ten per cent.

of the value thereof as set forth in the instrument of transfer or to five times the annual rent of the holding or of the portion or share transferred, whichever is greater.' "

"That in clause 23 in the proposed section 26D for clause (*d*), the following shall be substituted, namely: '(*d*) in the case of a transfer by gift of a holding or a portion or share of a holding, to five per cent. of the value thereof as set forth in the instrument of transfer or to three times the annual rent of the holding or of the portion or share transferred, whichever is greater.' "

"That in clause 23 in the proposed section 26D, for clause (*d*), the following shall be substituted, namely: '(*d*) in the case of a transfer by gift of a holding or a portion or share of a holding to three times the annual rent of the holding or of the portion or share transferred.' "

Sir, I want to make my observations with regard to all the three amendments which I have moved. Now, we have to decide what should be the landlord's fee in the case of gifts. It is very regrettable that the House has not been able to accept amendment No. 483, which stands in the name of Maulvi Asimuddin Ahamad, which asks that the clause should be altogether deleted from the Bill. The effect of that motion will be to exempt gifts from transfer fees altogether. Gifts stand on a different footing from other classes of transfer. In the case of a sale of a holding, the holding passes from one hand to another, and the transferee pays a good amount of money for the land he purchases, and there is exchange of money between the parties; but in the case of gifts there is no such passing of consideration. On the other hand, it may be said that gifts are very often made in favour of such persons who are altogether unable to pay anything to the landlord as transfer fees, whereas a transferee who purchases a holding stands on a different footing; he is a man who is going to invest some money by purchasing the land. Therefore, if he pays Rs. 200 for a bigha of land, it may be said to be somewhat reasonable that he should pay Rs. 40 to the landlord as transfer fee. Take the case of a particular gift. Suppose a gift is made by a person in favour of an infant or in favour of a destitute person who is quite unable to pay anything. Do the Government think that that infant or that destitute person should be compelled to pay an amount of transfer fee to the landlord? Nothing seems to be more inequitable than this. In this view of the matter, I think it would have been just and proper for the Government to accept the amendment of Maulvi Asimuddin Ahamad. But, as that has not been done and as the House is determined to give the landlord some transfer fees in the case of gifts also, I think that the figure should be as modest as possible. If we make this figure high, it will only be prohibitive for persons who now make gifts to infants or destitute persons. These persons will be discouraged altogether from making any gifts whatsoever, if any large transfer fees are to be paid by either the donor or the

donee. Therefore, I submit to this House that amendment No. 485, which provides for 10 per cent. to be given to the landlord in the case of transfer by gifts, should be accepted by this House. I am sorry I have not been able to follow the advice of the Hon'ble the Revenue Member that I should withdraw this amendment on the understanding that he would accept another amendment which provides for the same amount of transfer fees in the case of bequests. Sir, if the Government think it right or just that the amount in the case of bequests, that the Revenue Member has said should be reduced to 10 per cent. Why is he opposing this amendment? Why is it that he makes a conditional offer? The institution of gift is a very common custom in this country, much more common amongst Muhammadans than bequests. Therefore, the offer of the Hon'ble Member is not at all a fair one. I would rather be prepared to give up my claim in the case of bequests than in the case of gifts. With all the emphasis that I can command, I would request the Revenue Member to kindly revise his opinion and to be pleased to yield so far as these amendments are concerned. With these words, I place all my three amendments before the House.

The following amendment failed:—

"**Maulvi NURUL HUQ CHAUDHURI** to move that in clause 23, in the proposed section 26D (*d*), line 2, the words 'or a portion or share of the holding' and in lines 5 and 6, the words 'or of the portion or share' shall be omitted."

The following amendments were called but not moved:—

Babu JITENDRALAL BANNERJEE to move that in clause 23 in the proposed section 26D (*d*), lines 2 to 7, for the words beginning with "to twenty-five per cent." and ending with "whichever is greater," the following shall be substituted, namely: "to five per cent. of the value thereof as set forth in the instrument of transfer or to an amount equal to the annual rent of the holding or of the portion or share transferred whichever would be less."

Kazi EMDADUL HOQUE to move that in clause 23, in the proposed section 26D (*d*)—

(*a*) in lines 2 to 4 the words "to twenty-five per cent. of the value thereof as set forth in the instrument of transfer or" shall be omitted,

(*b*) in line 5 for the words "six times" the word "twice" shall be substituted, and

(*c*) in the last two lines the words "whichever is greater" shall be omitted.

Babu SACHINDRA NARAYAN SANYAL to move that in clause 23 in the proposed section 26D (*d*) for the words "twenty-five per cent." the words "thirty per cent." and for the words "six times the annual rent" the words "ten times the annual rent" shall be substituted.

Maulvi KADER BAKSH, Babu AMARENDRA NATH GHOSE, Maulvi KASIRUDDIN AHAMAD, and Khan Bahadur Maulvi MUHAMMAD ISMAIL to move that in clause 23, in the proposed section 26D (*d*)—

(*i*) in lines 2 to 4, the words "to twenty-five per cent. of the value thereof as set forth in the instrument of transfer or"; and

(*ii*) in the last two lines the words "whichever is greater"

shall be omitted.

11-15 a.m.

Babu ROMES CHANDRA BACCHI: Sir, I beg to move that in clause 23, in the proposed section 26D (*d*), lines 2 and 3, for the words "twenty five per cent." and in line 5 for the words "six times the annual rent" the words "twenty per cent." and "five times the annual rent," respectively, shall be substituted.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, this is consequential on what we have previously decided. Therefore, we are prepared to accept this amendment.

The following motions were called but not moved:—

Babu AKHIL CHANDRA DATTA to move that in clause 23, in the proposed section 26D (*d*), lines 2 and 3, for the words "twenty-five" the word "twenty" shall be substituted.

Mr. SYED MD. ATIQULLAH to move that in clause 23, in the proposed section 26D (*d*), in lines 2 and, for the words "twenty-five" the word "fifteen" shall be substituted.

Babu AMARENDRA NATH GHOSE to move that in clause 23 in the proposed section 26D (*d*), lines 2 and 3, for the words "twenty-five per cent. of the value thereof" the words "ten per cent. of the value thereof" and in line 5 for the words "six times the annual rent" the words "four times the annual rent" and in line 7 for the word "greater" the word "less" shall be substituted.

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 23, in the proposed section 26D (*d*)—

(*i*) in lines 2 and 3 for the words "twenty-five per cent." the words "five per cent.,"

(*ii*) in line 5 for the words "six times" the word "twice," and

(*iii*) in line 8 for the word "greater" the word "less" shall be substituted.

Maulvi NURUL HUQ CHAUDHURI: Sir, I beg to move that in clause 23, in the proposed section 26D (*d*), lines 2 and 3, for the words "twenty-five per cent.", the words "two per cent." shall be substituted.

Maulvi SYED NAUSHER ALI: Sir, I formally beg to move that in clause 23, in section 26D (*d*), line 2, for the words "twenty-five," the word "one" be substituted.

The following amendments were called but not moved:—

Mr. SYED MD. ATIQULLAH to move that in clause 23 in proposed section 26D (*d*), in lines 2 to 4, for the words beginning with "twenty-five per cent. of the value thereof" and ending with "transfer" the words "Rupee one only" shall be substituted.

Maulvi SHAMSUR-RAHMAN, Mr. SYED MD. ATIQULLAH, Srijut NAGENDRA NATH SEN and Babu AMULYA CHANDRA DATTA to move that in clause 23, in the proposed section 26D (*d*), lines 4 to 7, the words "or to six times the annual rent of the holding or of the portion or share transferred, whichever is greater" shall be omitted.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur, to move that in clause 23 in the proposed section 26D (*d*), line 5, for the words "six times" the words "twenty times" be substituted.

Maulvi NURUL HUQ CHAUDHURI: Sir, I beg formally to move that in clause 23, in the proposed section 26D (*d*), line 5, for the words "six times," the words "ten per cent. of" shall be substituted.

Maulvi NURUL HUQ CHAUDHURI: Sir, I beg to move that in clause 23, in the proposed section 26D (*d*), last line, for the word "greater," the word "less" shall be substituted.

Mr. PRESIDENT: The amendments which have now been moved are open to discussion.

Maulvi SYED NAUSHER ALI: Sir, I do not wish to waste the time of the House, but I wish to say only one word about the difficulty which will be created in the case of gifts by Muhammadans. Sir, we all know that the Muhammadan Law does not allow adoption. We have seen that in the "Explanation" it has been provided.....

The Hon'ble Sir PROVASH CHUNDER MITTER: May I, Sir, with your permission explain the position? The hon'ble member was perhaps, not present in the House when I explained the position of Government yesterday? I may say again that as regards any gift covered by the personal law of the Muhammadans, I am prepared to discuss all questions affecting Muhammadan Law with my Muhammadan friends day after to-morrow. As regards religious and charitable endowments and other matters, these will be discussed later on.

Maulvi SYED NAUSHER ALI: I quite appreciate his offer. I am not basing my argument on any express provision of the Muhammadan Law. What I am submitting to this House is that if you keep the landlord's fee at 20 per cent., it will cause a great hardship to the Muhammadans. I was referring to the fact that there was no provision for adoption under the Muhammadan Law. In the case of Hindu Law, there is a provision for adoption, and a provision has accordingly been made in this Bill. Though there is no provision in the Muhammadan Law for adoption, there is a custom in the country of having foster-children. There are foster-children in many Muhammadan houses, and although they are not children in the legal sense of the term, still a person interested in them may be inclined to make a gift in their favour. Then, there will be this difficulty: A man who has the greatest affection for his foster-children cannot make a gift to them without being compelled to pay 20 per cent. to the landlord. That is the difficulty which I was pointing out. And after hearing this, I hope the Hon'ble Member will agree to accept the amendment which has been put forward by my friend, Maulvi Nurul Huq Chaudhuri. If the House decide upon 20 per cent., it will be a serious hardship, and that is why I appeal in the name of justice, in the name of humanity, to the Hon'ble Member in charge of the Bill to accept the amendment.

Maulvi NURUL HUQ CHAUDHURI: Sir, I am afraid that there is a good deal of confusion in the minds of many hon'ble members in this House as regards Muhammadan Law on gift and bequest. Personally, I have the greatest respect for the learning and erudition as a lawyer of the Hon'ble Member in charge of the Bill, but I am bound to say that he has failed to grasp the spirit of Muhammadan Law as

regards gifts and bequests. In Muhammadan Law, the law of gifts and bequests is supplementary to the law of inheritance. This House is well aware that under Muhammadan Law, there is such a wide distribution of the estate of the deceased amongst persons who are related to him, that even the most carefully drawn-up scheme of inheritance cannot provide for every contingency that may arise. It is for this purpose that the law of gift and bequest has been made complementary to the law of inheritance. Take, for example, the case of the deceased son's children. Under the strict Muhammadan Law of inheritance, such children do not inherit anything. But the Muhammadan Law provides for bequest and gift, that is to say, the Muhammadan Law permits the grandfather to bequeath to the children of his pre-deceased son one-third of the whole estate, either as a bequest or as a gift. I appreciate the foresight of the Hon'ble Member in charge of the Bill, who has provided for cases of adoption under the Hindu Law, but probably he is not aware that the Muhammadan Law also permits adoption in a way. The difference is that under the Muhammadan Law the adopted child does not *per se* inherit anything, but his case has been provided for by bequests and gifts. The adoptive father in such cases avails himself of the provision of the Muhammadan Law to provide for his foster-children. Probably, it may be news to many gentlemen of this House that the Great Prophet himself was brought up as a foster-child. We have provided in the second proviso that the transfer fee shall not be payable in the case of a transfer by bequest or gift in favour of the husband or wife of the testator or donor, or of any relation by consanguinity within three degrees of such testator or donor. But as a matter of fact, the Muhammadan Law provides for inheritance of all these persons except in exceptional cases only, so that the real difficulty will arise not in the case of consanguinity within three degrees, nor in the case of husband and wife, but in the case of persons who have no such consanguinity within three degrees and who are adopted by someone more remotely connected with them as foster-sons. We have not provided for these cases. I am quite sure that this is entirely due to a misapprehension of the spirit of the Muhammadan Law. The frame of the Bill have ignored the provisions of the Muhammadan Law. I, therefore, appeal to the Hon'ble Member in charge of the Bill to reconsider the position. As the Hon'ble Member has given us an assurance that the whole thing will be reconsidered in a private conference with us, I am not inclined to say anything more on the subject. All that I want to say is that he should not take up his stand on the statement that he is prepared to accept one amendment only and not the other, that is either the amendment with regard to bequest or the amendment with regard to gift. My contention is that both these amendments stand on the same footing, and if he has any consideration for the sanctity of Muhammadan Law, I am quite sure that he will reconsider his position.

Maulvi ASIMUDDIN AHAMAD spoke in Bengali, the English translation of which is as follows:—

"Sir, I rise to oppose the motion of my friend Babu Romes Chandra Bagchi and to support the motions of Maulvi Tamizuddin Khan. I do not know why various fetters are being forged to tie up the hands and feet of the tenants. I do not know why Government are up and doing for bringing about the ruin of the tenants. I do not know whether the zamindars of Bengal have really become so helpless that Government have been compelled to have recourse to legislation to take away the power, liberty and money of the tenants. I do not know for what sins committed by the tenants it has been proposed to make them dependent, even for the food and clothes of their wives, sons and daughters, on the mercy of the zamindars. Rent has been enhanced to such an extent at the present time, that the tenants find it extremely difficult to pay it regularly. Is it anything short of oppression to force them to pay large amounts of money as salami at every step? Mr. Bagchi has proposed to fix the landlord's fee at 20 per cent., while Government's proposal is for 25 per cent. I do not know, Sir, whether all consideration of justice and charity has disappeared from the world. If any charitably-disposed man gives away as gift a small piece of land for the benefit of orphans or an adopted son, he must pay the landlord's fee, registration fee, and money for stamp in advance. Is such a thing possible? The result of this proposal would be that the pious practice of making gifts of lands for the maintenance of helpless orphans and needy men will altogether disappear. Cannot landlords make a little sacrifice, even in this small matter in which neither the landlord nor the tenants but a third party worthy of charity will be benefited. Under these circumstances, I request both Government and landlords to accept the proposal of Maulvi Tamizuddin Khan to fix the landlord's fee at 10 per cent."

Mr. F. A. SACHSE: I do not think that the members who spoke on this amendment have read very carefully the second proviso to section 26D (*e*). This proviso says:—

"that the landlord's transfer fee shall not be payable in the case of a transfer by *bequest or gift* in favour of the husband or wife of the testator or donor, or of any relation by consanguinity within three degrees of such testator or donor."

Then there is an explanation:—

"A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu Law."

Now I understand that it is not the principle of Muhammadan Law that adopted sons or foster-children should be considered lawful heirs. If so, we could have a mention of such people in the "Explanation."

We must remember that these provisions apply to gifts of agricultural lands and raiyati holdings. Raiyati holdings are seldom given to infants. The infants cannot look after them. There may be exceptional cases, as Maulvi Tamizuddin has said, where a gift is justified, though in 99 cases out of 100, it must be to some extent robbery of the donors' own heirs. In any case, we cannot legislate for exceptional cases. If we have different scales of transfer fees for sales and gifts, then sales will be disguised as gifts. The consideration will be paid seperately, though the document will be drawn up in the form of a gift.

Mr. A. K. FAZL-UL HUQ: The callous manner in which Mr. Sachse has for some days been treating the tenants' cause has caused me an unpleasant surprise. I think the Sachse who is here is not the Sachse of the Settlement Department—the disciple of Beatson-Bell and of Jack—not the Sachse whom I know 20 years ago at Jamalpur, a budding enthusiast of settlement work.

Sir, let me tell him that we are not now discussing the pre-emption clause, but when we come to that, we will be able to point out various remarks which he has made in the course of discussion of this clause to which we can take exception. I was surprised to hear Mr. Sachse remarking that in many cases gifts are practically robbery in disguise. I think Mr. Sachse's remark is not his own. It is obvious that he has somehow been contaminated by close contract with some landlords. Gifts can never be robbery in any sense of the term. In the case of Muhammadans, as Mr. Sachse is well aware, there is no adoption of children in the proper sense of the term. Sometimes there is an only daughter in the family and the son-in-law is brought up as the son and some provision has got to be made for him. If you were not a son-in-law or an adopted son, but the legitimate son, in the ordinary course you would have inherited the property without paying anything. But because of this provision, he has got to pay 20 or 25 per cent. of the value of the holding. This aspect of the case has got to be considered.

Our motion was that this clause should be entirely deleted. But this has been rejected. It is, therefore, not open to us to consider the question whether such a provision should be in the Bill or not. All that is left for discussion is whether the amount of salami which will have to be paid will be 25 per cent. or less. My friend, the mover of the amendment, has made it clear that so far as raiyats are concerned, 5 per cent. would be enough and that is, I think, a fair percentage to pay to the landlord. I have, Sir, failed to understand the remark made by the Hon'ble the Revenue Member in response to Mr. Romes Chandra Bagchi, when he said that he was going to accept the amendment proposing the figure 20 per cent. Sir, I think the offer was rather premature on his part. We are now considering the question of percentage, and because in the case of gifts or bequests we have got to

accept that figure—that is an argument which I do not follow. I would, therefore, ask the House to consider whether the case of transfer of the occupancy rights is on a par with the case of gifts and bequests. In the latter case, the person has got to make some provision for the adopted son or son-in-law, and there is no question of his getting any money by it. Sir, I submit there is no magic in the figure 20. The question of Muhammadan Law is involved in the question of gifts and bequests. Therefore, if the Hon'ble the Revenue Member is prepared to discuss with us the position regarding this amendment affecting the Muhammadans, then I submit that the consideration of clauses (*d*) and (*e*) ought to be postponed for further consideration.

The Hon'ble Sir PROVASH CHUNDER MITTER: I thought I had made my position quite clear. Mr. Fazl-ul Huq has suggested that gifts are common forms of transfer under the Muhammadan Law. That may or may not be so. But in this particular case, I do not see any reason, Sir, why the Muhammadans should be placed in a better position than non-Muhammadans. Non-Muhammadans have to pay a transfer fee in the case of gifts; then why should not the Muhammadans pay the fee? But if there be a personal law for Muhammadans as to the form of transactions, we do not want to touch it if we can help it. But apart from that, the main reason why I am opposed to this amendment is this: If we accept this amendment, the provision of the Bill can be evaded by every transferrer using the word "gift" instead of the word "sale." Further there is no justification to differentiate between Muhammadans and non-Muhammadans in this case.

As regards bequests, I am also opposed to the amendment on general principles, but as I have already said, we want to placate the tenants so far as we can. In view of the principles embodied in the Bill, I am willing to accept it as a matter of compromise and also because there is not the same danger in the case of bequests as there is in the case of gifts. Bequests are only made by a person in view of his death and the provisions in the Bill can only come into operations after his death. In the case of a bequest, therefore, there will be no danger of using the form of gift for a transaction which is really a sale. This is what I have got to say about this amendment.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: Sir, I oppose the amendment. At present, there is no difference between a transfer by gift and a transfer by sale. Moreover, as the Hon'ble Member has observed, if we reduce the percentage of salami, it would lead to corruption and fraud. The other day there was a round table conference, and it was decided there by a majority that 20 per cent. should be accepted in the case of transfer. Therefore, there is no reason whatsoever to reduce the percentage of the salami in

the present case. If the question of salami be reduced, then the position will be that in many instances, in order to avoid salami, a real sale will put in the colour of a gift, which will result in depriving the zamindars of their legal dues.

11-45 a.m.

Mr. JOGESH CHANDRA GUPTA: My friend to the right thought that Mr. Sachse was possibly contaminated by his connection with the landlords, and hence he was opposing the amendments put forward. I do not know what sort of contamination he was referring to, but I will quote from my friend Mr. A. K. Fazl-ul Huq's own speech, and put it forward as the best reason for opposing this amendment. My friend uttered only the other day in this Council these very words:—

"The raiyats know what subterfuge is. If they do not know this, there are members of the legal profession to advise them. During the last few years, a practice has grown up in my district, Bakarganj, not to transfer at all but create usufructuary mortgages for 2,000, 5,000 or 50,000 years. These are to all intents and purposes transfers, but yet you cannot touch them."

Mr. Huq must have been speaking in an exaggerated language about 2,000, 3,000 or 50,000 years, but the fact remains that the tenants know what subterfuge is. The fact also remains that there are no dearth of advisers to tell them how to avoid real transfers. This House has accepted that the tenants will get the right of transfer and the landlord's fee will be paid as a compensation—compensation for the existing rights which the landlords undoubtedly enjoy. Whatever may be the view with regard to the permanent settlement, with regard to the desirability or otherwise of that measure it cannot be gainsaid that the permanent settlement still exists in Bengal, and there exists all the rights and ramifications arising out of the permanent settlement. We are not here to discuss whether the permanent settlement has injured Bengal or not. But let us now take the existing state of things. There is the permanent settlement under which there is the right of zamindars, of the landlords and the various grades of tenure-holders. Under the existing system they have been realizing a fee, call it salami which my friend Mr. Nausher Ali objected to as very derogatory, call it nazarana, or call it anything you like. Every settled Government must pay some sort of compensation when they are taking away certain existing rights. I would very much like to try and get hold of all the profit-earning concerns like the tea plantations and the jute mills, because there is much profit made which may not be and are not considered reasonable, but can I possibly think of going and asking the owners of these jute mills or the tea garden owners to give up some of the profits they are making, because some may contend rightly that excess profits should be distributed amongst the poorer people of the country?

Certainly not. Just as it is not possible for us to ask all these powerful mill-owners, planters and other people to give up the profits which they are enjoying rightly or wrongly under the laws of the land, similarly, I should think it is a matter of academic concern because we will not be able to get out of the facts that there are the existing rights of the landlord and there are the social and economic conditions. I will remind my friends to the right of the words of Sir Abd-ur-Rahim when he pertinently asked: "What right have we to try to take away the existing rights?" Therefore, Sir, let us in considering the position not be biassed in any way and not be led away against those who have the existing rights, but proceed on the basis of the existing social and economical conditions, to quote the words of Mr. Jitendralal Bannerjee, and then proceed with the legislation and consider them. That is what I will ask them to do. As I have said in the language of Mr. A. K. Fazl-ul Huq, the raiyats know what subterfuge is. If you pass a legislation that there will be a transfer, and when a landlord's fee has also been agreed upon by a vote of 90 against 20, let us see that in the provisions of this legislation we do not leave any room for all these subterfuges—we do not encourage mala fide transactions in order to avoid the landlord's fee and the provisions of this Act. That will be our duty, and hence when we are considering the question of gift or bequest, we are only considering it from the point of view that gifts be not resorted to in order to avoid transfer. Let us put a stop to the advices of the legal profession as to how to avoid a transfer and create a gift and not pay the landlord's fee which some of my friends grudge so much to pay. I say that the question of gift to one's near and dear relations is provided for in the Bill, because the Bill says that provided also that the landlord's transfer fee shall not be payable in the case of a transfer by bequest or gift in favour of the husband or wife of the testator or donor, or of any relation by consanguinity within three degrees of such testator or donor. That being the provision in the Bill, is there any reasonable grievance that the people within a near degree of relationship will have to pay the landlord's fee? I submit there is absolutely none. If then they try to insist upon all kinds of gifts being excluded from the provisions of this Act, they will only be opening the door wide for subterfuges and for evading transfer which it is our solemn duty to prevent.

Khan Bahadur Maulvi EKRAMUL HUQ: I should like to draw the attention of the Hon'ble Member in charge to one fact: In the case of gift, the amount of salami payable has been fixed at Rs. 20, while in the case of bequest Government have agreed to fix it at Rs. 10 only. Here unwittingly Government seem to have made an invidious distinction between Hindus and Muhammadans. The Hon'ble Member in charge knows it perfectly well that Muhammadans cannot bequeath the whole of their property. Under the law, it is only one-third of the

property that they can part with, but in the case of gift they can part with the whole. I think, therefore, that while it will benefit the Hindus to a very considerable extent, the Muhammadans will not be benefited to even half that extent. I trust the Hon'ble Member will see that justice is done to all alike.

Maulvi ABUL KASEM: On this question, the only argument that has been used by the Government benches, as well as by my friends to my left, is that if we allow gifts to be made without the payment of any salami or nazarana—whatever may we call it—it will lead to subterfuges on the part of the tenants making transfer and calling it gift. We have been told that so far as gifts to near and dear relations are concerned, the Bill provides for transfers, gifts and bequests without the payment of any salami. We have been further told that in the case of gifts in favour of any person or relation by consanguinity within three degrees, the law, as provided in the Bill, will apply. May I ask my friends and the Government benches, what will happen in the case where a man wants to make a gift, which is more often the case, to a deceased daughter's son? It has been stated that if this salami is not realised, the rights of the zamindars will be interfered with, and in this connection a comparison has been made with the tea-planters and jute mill-owners. But my friends forget that the tea-planters and jute mill-owners derive their profits by the sweat of their brow and intelligence. They do not enjoy it as an unearned income. They risk their capital and exercise their business capacity first, and then they get their hard-earned profit; and I do not think anybody can make any claim over such profits. The only claim that the landlords can put forward is that their rights are of a defined character. All that I would urge on that point is this: Would it be reasonable on our part, in order to avoid subterfuges by the tenants, to deprive the people of their right to make bonâ fide gifts or penalise the privileges of bonâ fide gifts by providing for salami?

My friend, Mr. A. K. Fazl-ul Huq, may have said that the raiyats are not fools and that they know all about the art of subterfuge. If the raiyats had not been fools, people would not have treated them in the way they had, and the members of this House would not have dared make an attempt to take away their rights.

Mr. BARAT C. BASU: Upon this question an argument has been advanced on two grounds—first on the ground of sentiment and, secondly, on the ground of the questionable rights of the zamindars to demand transfer fees. It has also been urged that the Permanent Settlement Regulation was passed on wrong data. It is not time to discuss the policy of the permanent settlement, nor will any good result come out of such a discussion. We are to face the problem as it is, and consider whether this transfer fee is just or not under the

law. I heard my friend, Maulvi Abul Kasem, exclaiming in the middle of the speech of one of the members that the zamindars were being recompensed for their loss. Undoubtedly these are pertinent questions, but you are to take into consideration as to what we are going to enact. As everybody is aware, transfer of occupancy rights was unknown—it was unknown ever since the time of the permanent of settlement. (Question, question.)

12 noon.

They were unknown ever since the time of the permanent settlement; but if we go back to the Muhammadan period, we know that ever since the time of Alauddin, beginning from the year 1692, transfers were allowed of those properties which were held under wasifa khiraj.

Mr. PRESIDENT: Please come to more recent times. (Laughter.)

Mr. SARAT C. BASU: I am coming, Sir, but in considering recent times we must remember what was the practice in Muhammadan times, because that was continued by the British Government. When the British came to this land and declared the permanent settlement, only the wasifa khiraj paying lands were made transferable, and not others. Concerning the question of gifts, we know for certain that so far as that benevolent law goes, there is great doubt as to whether those gifts were heritable or not. Secondly, when we consider the gifts for a portion of a holding we find that it was impossible for anybody to do that under the Muhammadan Law, but now by this enactment we are allowing transfer of a portion of occupancy right and also the right of compulsory splitting up of a holding, in spite of the wishes of the landlord to the contrary. What I submit for the consideration of the House is that the landlords and zamindars were not consulted in this connection. Whether they are proprietors of the land in the true sense of the term, or whether they are proprietors in the sense in which they have been enunciated in the permanent settlement, the question whether they are bound to recognise the right of transferability without any salami is one which can never be settled. But we know this much, that the zamindars were granted 10 per cent. as malikana, whatever that might mean. So there is the malikana to be taken into consideration, and malikana in the case of wasifa khiraj rights only. I have said that from ancient times, only those paying muksuma khiraj had no transferable right at all. Now both the classes of raiyats are gaining the right of transfer and also the right of splitting up their holdings. Therefore, some compensation is due to the zamindars: in the case of the wasifa khiraj raiyats 10 per cent., and in the case of the other raiyats, it may be anything. All these things should meet with consideration some day or other. It has been said by another speaker before me, that it is a subterfuge; but quite apart

from subterfuge, it may be enforced by the money-lenders when they may compel the parties, the debtors, to execute conveyances in their favour. We have already settled that there should be a sword hanging over their heads. Even though the money-lenders may compel their debtors to convey the land to them at a low price, the zamindar might come hereafter and claim the occupancy holding; the consequence of that will be, although the zamindar might or might not claim the land, the money-lenders will have to take care not to compel their debtors to execute conveyances at low prices, as in that are the land may be taken out of their hands by the zamindar. But if the money-lenders know that they can avoid the zamindar, they will compel the debtors to execute conveyances in their favour; they will do nothing less than encompass them for the ruin of their occupancy right and other rights which they consider to be desirable. So that, whether it is 25 per cent. or, as there has been a compromise which has been accepted by Government, 20 per cent., it will be a salutary measure for the protection of raiyats against the rapacity and the extortionate demands of the money-lenders. I have already explained to the House that it is not the interest of landlords alone that I am making this statement. It is for the protection of the raiyats that this motion has been brought forward, so that the land may not be taken out of their hands by ruses and subterfuges. These are their ancestral lands, and here they have lived generation after generation, and we must take measures to prevent them going out of their hands by all possible means. I should like to submit that as the rate has been reduced from 25 per cent., to the 20 per cent., on the analogy of that, an uniform rate be fixed in all cases.

The Hon'ble Sir PROVASH CHUNDER MITTER: If you think, Sir, that this question has been sufficiently discussed, this may be put now.

Mr. PRESIDENT: As far as I have been able to gather from the debate, I think the House would like me to put amendment No. 497 first.

The motion that "in clause 23 in the proposed section 26D(*d*), lines 2 and 3, for the words 'twenty-five per cent.' and in line 5 for the word 'six times the annual rent' the words 'twenty per cent.' and 'five times the annual rent,' respectively, shall be substituted" was then put and a division taken with the following result:—

AYES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Promatha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Bose, Mr. Sarat C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Mr. S. C.
Bose, Mr. Subhas Chandra.

Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakrabortty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Saraj Kumar.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Morr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Munim, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Poddar, Mr. Ananda Mohan.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Dr. Bidhan Chandra.
Ray, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiquilah, Mr. Syed Md.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Maulvi Nurul Huq.
Choudhury, Maulvi Khorshed Alam.
Haque, Khan Bahadur Maulvi Azirul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Maulvi Latafat.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Sattar, Khan Sahib Abdus.

The Ayes being 67 and the Noes 23, the motion was carried.

The motion that in clause 23, in the proposed section 26D(*d*), last line, for the word "greater" the word "less" shall be substituted, was then put and lost.

12-15 p.m.

The motions standing in the names of Maulvi Tamizuddin Khan, Maulvi Nurul Huq Chaudhuri and Maulvi Syed Nausher Ali were not put, as they were covered by the foregoing decision of the Council,

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Babu Amarendra Nath Ghose, may I have your permission, Sir, to move on his behalf the amendment which stands in his name?

Mr. PRESIDENT: Yes.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 23, to the proposed section 26D, the following be added, namely:—

"Provided also that no landlord's transfer fee shall be payable in respect of any transfer of a holding or portion of a holding which may have been effected between two or more raiyats of a village for the purpose of consolidation of holdings, even though for the purpose of effectuating a scheme of consolidation any royalty should have been paid as part of the consideration."

I have moved the above amendment on behalf of my friend who is absent for the time being, and I hope he will not dissociate himself from this motion which I have moved on his behalf. Now, the object of this motion is this: You must have noticed that in view of the recommendations of the Royal Commission on Agriculture it is absolutely necessary that there should be less of small areas and consolidations of different plots into one big holding. I do not want to say much, but I think it is absolutely necessary, in the interests of agriculture, that small holdings should be consolidated into big holdings. I, therefore, move this amendment.

Mr. JOGESH CHANDRA GUPTA: Sir, with regard to this motion, I do not know whether my friend the Khan Bahadur was here when the Hon'ble Member in charge made a statement that Government was considering something of exchange of contiguous plots. After this amendment was tabled, the mover found that it related to the consolidation of different plots which is rather difficult to define in this particular clause. These are the points which I will ask my friend, wo has taken upon himself to move this amendment, to consider, and then not to press it any further.

Mr. PRESIDENT: When a member requests me to allow him to move an amendment on behalf and in the absence of the member against whose name it stands, I take it that such a request is made to me with the consent of that member, unless the intending mover makes it clear that he wants to do so quite independent of anyone else. You wanted to move on behalf of Mr. Ghose, but I now find that you did not take his consent and were, in fact, moving his amendment against his wish.

Khan Bahadur Maulvi AZIZUL HAQUE: No, Sir, it has not been the practice.

Mr. PRESIDENT: I mean I always presume that, and so when the proxy is found to cast reflection upon the conduct of the member, on whose behalf he professed to act, for not moving it himself, I have every reason to feel that the mover was abusing the right which I gave him in good faith and was going against the wish of the member whose property the amendment was.

Khan Bahadur Maulvi AZIZUL HAQUE: I submit, Sir, that it is a point of privilege in this House that in the absence of a member who has given notice of a motion anybody can move it.

Mr. PRESIDENT: No, it cannot be claimed as a matter of right. It is in the discretion of the President to allow or not to allow one to do so. Why did you not say that you wanted to move it on your own behalf?

Khan Bahadur Maulvi AZIZUL HAQUE: Without meaning any disrespect to you, Sir, it seems that it will be taking away a convention which we are trying to set up in this House, viz., the privilege of moving a resolution in the absence of another member.

Mr. PRESIDENT: You have raised a very big question; but, I need not say anything about convention for the simple reason that, at present, a matter like this is governed by rules. When the Chair permits a member to move another member's amendment, he no doubt admits it as a motion on short notice; but in this case, the permission was sought and given for the benefit of the member whose property the amendment originally was. When I found that, instead of helping the member, whose substitute you were, you were actually attempting to use the amendment as a handle against that member, I felt that it was clearly the duty of the Chair to intervene and withdraw that permission. I would like to have no further discussion on this point. You cannot move the amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I accept the ruling, but I take it, Sir, that when a member tables a motion, he is surely expected to stand by it.....

Mr. PRESIDENT: No, not alaways. A member may not move his amendment, or even withdraw it after he has moved it, by the leave of the House.

Khan Bahadur Maulvi AZIZUL HAQUE: He did not send any notice to you, Sir,

Mr. PRESIDENT: I cannot allow you to argue.

Khan Bahadur Maulvi EKRAMUL HUQ: Is not the amendment the property of the House?

Mr. PRESIDENT: The amendment is the property of the member who gave notice of it. The President may or may not allow any other member to move it.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order, Sir, I consider it a privilege of the House that I might move the amendment, unless the mover expresses his desire to the contrary, and that he does not desire to do so as he has changed his opinion.

Mr. PRESIDENT: It is not a question of privilege at all. It lies absolutely in the discretion of the President.

Khan Bahadur Maulvi AZIZUL HAQUE: May I point out a mistake of fact on the part of the Chair? It is this: The member did not express whether.....

Mr. PRESIDENT: Khan Bahadur, I am afraid you are merely arguing. I am not prepared to allow you to do so.

Maulvi TAMIZUDDIN KHAN: May I rise on a point of order?

Mr. PRESIDENT: Is it with regard to this matter? This matter is closed.

Maulvi TAMIZUDDIN KHAN: But whatever may be the subject, am I not entitled to rise at any stage? My point of order is this: Under what rule is the Chair entitled to retract the permission which was already granted?

Mr. PRESIDENT: It is not question of rule, because the rule which permits the Chair to grant permission to a member to move an amendment which stands in the name of another member is merely discretionary, and, of course, using my discretion I had allowed the Khan Bahadur to move the amendment; but when I found that he was not making the right use of the privilege I had given him—he was actually taking advantage of the absence of a member—it was my duty to retract the permission that I had given. The matter is now finally closed, and I hope members will not rise in their places on further points of order in regard to this matter.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, may I rise on a point of personal explanation? I strongly protest as a member of the House that you have thought that I was abusing my right. I have only moved the amendment which I think will ostensibly benefit the tenant. That is my crime, and that is the abuse I have committed.

Mr. PRESIDENT: Order, order.

Maulvi TAMIZUDDIN KHAN: What will be the effect of the amendment that has been moved with the permission of the Chair?

Mr. PRESIDENT: The amendment was allowed to be moved, but when I found that the Khan Bahadur was not making the right use of it, I retracted my permission. So, the matter is no longer before the House.

Maulvi NURUL HUQ CHAUDHURI: May we know, Sir, under what rule or standing order you are authorised to retract a permission which you had given?

Mr. PRESIDENT: Order, order. That question has already been disposed of.

Maulvi ASIMUDDIN AHAMAD: I formally move that in clause 23, clause (*e*) of the proposed section 26D be omitted.

Mr. A. K. FAZL-UL HUQ: For the reasons for which I gave notice that sub-clause (*d*) should be omitted, I have also suggested that sub-clause (*e*) of the proposed section 26D be omitted. The case of a gift and bequest practically go together, and that is the reason why I have given notice of this amendment that in these two cases, viz., bequests and gifts, there should be no payment of the landlord's fee. Now, Sir, I am somewhat at a disadvantage, because I find that many of the gentlemen who had given notice of similar amendments are now retracting and beating a retreat. My friend, Mr. Nagendra Nath Sen, had given notice of a similar amendment, and I do not know, Sir, if he has signified his pleasure to you that he retracts the opinion which he held some time ago when he was in the cool atmosphere of Khulna and gave notice of this amendment. If he has, I think he owes it to the House to disclose the reasons to which you referred in giving your decision on the points of order which made him change the opinion. Mysterious influences seem to be working amongst my friends on the left, and they owe it to this Legislative Council to come out sincerely and boldly and put forward the reasons which induced them to give notice of amendments and then go back upon them on pressure from other people.....

Mr. JOGESH CHANDRA GUPTA: I rise on a point of order. Is Mr. Fazl-ul Huq entitled to say that Babu Nagendra Nath Sen was, through undue pressure or mysterious influences, induced not to move this amendment? Is he entitled to make allegations like that?

Mr. PRESIDENT: No individual member should be attacked. But there was, perhaps, no direct allegation made by him, though there might be some inference.

Mr. A. K. FAZL-UL HUQ: I never mentioned any name. I made a general observation, and it is still open to them to contradict it. We are certainly taken aback at seeing that members who gave notices of amendments never rose in their seats, nor told the Council why they did not move the amendments. The Council is at least entitled to know what made the members change their opinions. It may be that if Babu Nagendra Nath Sen were to speak out his mind, we could follow him. The best thing, I think, in all fairness is to speak out plainly and sincerely what has urged him to change his mind.

So far as this amendment is concerned, all the arguments that we put forward before the Council with reference to the deletion of clause (*d*) applies to this case also. With these remarks, I support the amendment before the House.

Babu AKHIL CHANDRA DATTA: Sir, may I be permitted to say a few words about the challenge my friend, Mr. Fazl-ul Huq, has made. He says that Babu Nagendra Nath Sen owes it to this Council to explain his reasons why he did not move the amendment. Sir, may I point out to Mr. Fazl-ul Huq that this has been nothing unusual ever since the Bengal Tenancy Act has been discussed. It is a matter of every day or every hour occurrence on the part of members from all the different groups, including the gentlemen who pose themselves as the champions of the tenants. They have tabled motions which they neither moved, nor explained their reasons for not doing so. I say without fear of contradiction that there are any number of instances in which the gentlemen, who had already given notice of amendments, did not move them and never cared to explain the reasons for not doing so. It is a wonder that after all these days Mr. Fazl-ul-Huq should now think that it is a duty which a member owes to the House to explain the reasons. Now, apart from this challenge, I may, for the information of my friend, Mr. Huq, and others of his group, state the reason as to why we, the members of the Congress Party, have not in some instances moved the motions we had tabled. Individually, every member has the right after due deliberation and consideration to withdraw the amendment if he finds that the amendment is not in the interests of the people and it is not only his duty, but it is his privilege, and he owes it to the country and to the constituency not to proceed with the motion, of which he might have given notice.

12-30 p.m.

Now, Sir, what we on this side of the House— the members of the Congress Party—are doing is that we are not proceeding with this Bill at random or haphazardly. We have been siting every day to consider this Bill—not only now, but from the very beginning of this legislation; we have been sitting for weeks together.

Maulvi NURUL HUQ CHAUDHURI: On a point of order, Sir. What have we got to do with the activities of the Congress Party? Are we here to listen to the virtues of the Congress Party?

Mr. PRESIDENT: I must give the member an opportunity to refute the charges made against his party.

Babu AKHIL CHANDRA DATTA: Sir, we have been asked to explain certain things. I am furnishing that explanation.

As I was saying, we have been meeting day after day and discussing these amendments clause by clause—one after another. We have had, in some instances, more detailed discussions in our party meetings than probably we do here in this open House. And when it is pointed out to any member who has tabled an amendment that his amendment is not for the good of the country as a whole, then, if he is convinced, he changes his opinion. And even if he is not convinced—I shall make no secret of it—if the majority of the party are against his amendment, then it is his duty as a member of the party, as an honest member of an honest party, as has been described by Mr. Fazl-ul Huq, to give way to the opinion of the majority. It is for this reason that individually and collectively we have not in some instances moved the motions of which we had given notice. There is nothing unreasonable, nothing dishonest in this. On the other hand, I think it is only honest on our part not to persist recklessly in moving motions, which we consider to be not in the best interests of the country, simply because we had given notice of such motions.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I beg to support the amendment of my friend Mr. Fazl-ul Huq. Sir, so far as we are concerned, during the course of the last few days, nothing that has happened has appeared to us as unusual. We have become familar with many things here, we have heard many things here, and as my friends have been meeting daily, I am more and more becoming nervous what further calamities are in store for us. Sir, there is nothing unusual in a member in not moving an amendment which stands in his name. But the most surprising thing is that whatever motion is for the benefit of the tenants.....

Mr. PRESIDENT: Khan Bahadur, I had better warn you at this stage. Under section 14 (2) (ii) you should not level any personal charge against any individual member of this House. I am afraid a regular charge was levelled against Srijut Nagendra Nath Sen.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I dissociate myself from any such attack deprecating the conduct of any member who guides himself according to his point of view, but, Sir, I think it is also my privilege to say that it is a striking fact.....

Mr. PRESIDENT: Khan Bahadur, will you please come to your point. I cannot allow you to proceed if you continue in this vein.

Khan Bahadur Maulvi AZIZUL HAQUE: In that case, Sir, I shall have to sit down.

Mr. PRESIDENT: I am very sorry, but I cannot help it.

Maulvi NURUL HUQ CHAUDHURI: The hon'ble member who has been returned from the non-Muhammadan Constituency of Tippera has referred to us as persons who are posing as the friends of tenants. I can assure him that although we do not wear khaddar, we have been fighting the cause of the tenants, because we believe that it is with the tenants that the agricultural prosperity of this country is bound up. We are fighting for them not because we are interested in their cause, not because we are tenants—for most of us are landlords—but because we do believe that the day will come when the landlords will be deprived of every pice if we persist in this course, and there will be nothing left but the middle classes and the tenantry. We are the genuine friends of the tenants; we have never posed, we have never pretended, to be the genuine friends of the tenants. We have never shed false tears in the cause of the down-trodden people of the country. I can challenge any person to say that we have ever posed either in this House or in the country as the friends of the tenants.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, may I rise on a point of personal explanation? You permitted Babu Akhil Chandra Datta to have a fling at us, but you did not allow me to proceed with my speech in defence.

Mr. PRESIDENT: Khan Bahadur, you are really mistaken. I simply warned you at the beginning that no attack should be made against any individual member, but in the heat of the moment you thought that you should not proceed with your speech. It was clearly your own fault.

Maulvi NURUL MUQ CHAUDHURI: Sir, can we not refer to a party, if not to individuals?

Mr. PRESIDENT: My business is to see that all these amendments are discussed within certain limits, and it is certainly my duty to caution a member when he oversteps these limits. I give some latitude only when circumstances require it.

Maulvi TAMIZUDDIN KHAN: Sir, I support the amendment of my hon'ble friend Maulvi Asimuddin Ahamad, viz., that in clause 23, clause (*e*) of the proposed section 26D be omitted.

Sir, if this amendment is accepted, it will mean that no transfer fees will have to be paid in the case of bequests. The Hon'ble the Revenue Member gave an assurance a few minutes ago that he was prepared to placate the tenants to some extent, and that, therefore, he was willing to accept one of the amendments. I am thankful for this drawing of sense in the Hon'ble Member—that he is prepared to placate the tenants to a certain extent. But let us see whether the concession to which he is agreeable will actually placate either the tenants or their representatives.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, with your permission, I may say at once that we are prepared to accept amendment No. 518, if this concession is accepted in the spirit in which it is offered. But if it is thought that it is no concession at all, then I withdraw it.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, are we to understand that Government have no sense of justice? Should they not consider this question purely on its merits?

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, if we were to proceed on the merits of these amendments as to whether they are right or wrong, then none of them ought to be accepted. But as there is no chance of fraud if a lower percentage for bequests is accepted, I am willing to accept it if my friends think it a concession. If not, not.

Mr. A. K. FAZL-UL HUQ: Sir, in that case it will be 20 per cent. in cases of gift and 10 per cent. in cases of bequest. There will thus be a differentiation between the two cases. Will the Hon'ble Member kindly let us know if there is any valid reason for this differentiation?

The Hon'ble Sir PROVASH CHUNDER MITTER: In our opinion there is none whatsoever, and we think that it should be uniform. But

the amendments put forward seek to make a differentiation. If the House thinks that a lower percentage should be fixed for bequests, we are willing to accept it, because there is no chance of fraud.

Mr. PRESIDENT: This offer was held out by the Hou'ble Member at an earlier stage, and that was not accepted by the mover of the amendment. So it cannot be fruitful at this stage.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, the position has been misunderstood. We do not like to be placated by Government or anybody else. We stand upon the principles of justice, equity, and fair play.

Mr. PRESIDENT: Khan Bahadur, the only course left open to you now is to indicate what you want by actual voting.

Mr. A. K. FAZL-UL HUQ: On a point of personal explanation, Sir. I did not suggest that this offer ought not to be accepted. Though it is a very small concession, I think it will be extremely foolish to throw away this generous suggestion.

Mr. PRESIDENT: You will have an opportunity of discussing this matter when it is before the House.

Maulvi TAMIZUDDIN KHAN: Sir, I would ask you to look at this question from the view point of the Muhammadan Law and the Muhammadan community, as well as the Hindu Law and the Hindu community. Sir, amongst the Muhammadans there are very few bequests, for the simple reason that the Muhammadan Law does not allow a bequest of more than one-third of a man's property. As regards his own heirs, he can bequeath only one-third of his property to any-one, and that too, with the permission of the other heirs. Therefore, necessarily amongst the Muhammadans, there are very few bequests. Moreover, Sir, these raiyats, both Hindus and Muhammadans, are mostly illiterate people, and here we are mainly concerned with the case of the raiyats. Amongst the Muhammadans, there are very few bequests even amongst talukdars and tenure-holders. These illiterate Hindu and Muhammadan raiyats hardly know what bequests are and how to make them. They rarely make any bequest. Therefore, the proposal made by the Hon'ble Member will not benefit either the Muhammadan raiyats or the bulk of the Hindu raiyats. It will only benefit a small portion of the Hindu raiyats who belong to the higher classes, and who may resort to the practice of making bequests. In this view, Sir, the offer made by the Hon'ble Sir P. C. Mitter is surely understandable.

12-45 p.m.

Now, Sir, I beg to offer a few remarks as to the merits of the question. I do not see any justification whatsoever why transfers by bequests also should be saddled with certain fees payable to the landlords, and I do not think there can be anything more absurd than this. Bequests are transactions which do not take effect all at once. A man may make a bequest when he is 30 years of age. It will take effect after, say, another 30 years, when he dies. What does this Bill propose? The landlord's fee should be paid at the time of making the bequests. It is a travesty of truth to say that the actual transfer takes place at the time of the bequest. This transfer is not effected till after the testator's death and in the meantime he may make modifications in the bequest or he may revoke it altogether, but he will have to pay the landlord's fee at the time he makes the bequest.

Mr. F. A. SACHSE: On a point of order, Sir. I think the mover has entirely misread the section. The transfer fee will be paid at the time when the Court grants probate after the death of the man who makes the bequests.

Maulvi TAMIZUDDIN KHAN: I am sorry, Sir, that I misread the section. I take this pointing out of my error in a sporting spirit. But I hope the House will be pleased to see that these bequests are not transfers for consideration. If the clause is passed into law, then it would be putting a discount on bequests. It will have the effect of discouraging them. In that view of the case I support the amendment.

Mr. S. C. BOSE: Sir, my esteemed friend Mr. Fazl-ul Huq in his anxiety to attack the Congress Party so far forgot himself that he did not put forward before the House any reasons in support of the amendment of Maulvi Asimuddin Ahamad. I should have thought that any member of the House who seriously wanted to influence the House in favour or against any amendment would consider that amendment first and then place before the House considerations which would enable to decide whether that amendment ought to be accepted or rejected. Mr. Fazl-ul Huq possibly felt at the back of his mind that he could not draw a distinction between a transfer by bequest and a transfer intervivos. If that was so, then for the sake of uniformity the fee properly payable ought to be the same in both the cases.

Sir, I will not emulate my friend Maulvi Nurul Huq Chaudhuri in his talk of " posing " and " posers." I think it needs some amount of self-respect to appreciate the value of khaddar, and when that self-respect is absent in a particular person or persons, I do not expect him to appreciate the sense of dignity a man feels when he wears khaddar.

Maulvi Nurul Huq Chaudhuri has talked of being a tenants' representative. He is now posing as a tenants' man in this Council. That reminds me of the old familiar story which we learnt in our nurseries of three tailors of Tooley Street talking in the name of the British Parliament! It is easy after you are returned to the Council on one ticket to pretend that you are representatives of somebody else. To my friends here, who are talking in the name of tenants, I say that I wish that they will have the courage when the occasion comes, which will come sooner or later, sooner rather than later—I wish they will have the courage to come back to the Council with the mandate of their constituencies in support of the proposals they are now bringing before the house.

Sir, no distinction can be drawn between the Hindu Law and the Muhammadan Law on the point of bequests or gifts. If I have been able to follow the argument of Maulvi Tamizuddin Khan, I think what he wanted to say that there was something in the Muhammadan system of jurisprudence which entitled the Muhammadans as a class.....

Maulvi TAMIZUDDIN KHAN: I said that under the Muhammadan Law very few bequests are really made.

Mr. S. C. BOSE: Sir, let us not talk of "posing" and "posers." Let us appreciate the view points of both tenants and landlords and let us, casting passions aside, address ourselves to the main question as to how a beneficient system of land laws can be introduced into this country which may be of lasting benefit, both to the tenants and the landlords.

The motion that in clause 23, clause (c) of the proposed section 26D be omitted was then put and a division was asked for.

The motion was then put and lost.

Mr. PRESIDENT: Number 519 does not arise, because decisions on Nos. 349 and 394 govern that. I, therefore, propose to have Nos. 518, 520-523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 538, 539, 540 and 541. I will have one discussion on these and put them separately.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 23, in the proposed section 26D, for clause (e), excepting the two provisos and the explanation, the following shall be substituted, namely:

"(e) in the case of a transfer by bequest of a holding or a portion or share thereof to ten per cent. of the value thereof as determined by the Court for the purposes of stamp duty for the grant of probate or letters of administration or to five times the annual rent of the holding or of the portion or share transferred, whichever is greater."

As the House has already decided upon giving some transfer fees to the landlord even in the case of bequests, it is for us now to decide

what that transfer fee should be. The Hon'ble the Revenue Member has said that he would stick to his offer if it is only accepted by persons interested in the cause of the tenants. Sir, I should be the last man to refuse any little privilege which comes from anybody, whether the Government or any others. I am reminded in this connection of the story of a beggar who came for alms to the house of a miserly woman. The woman instead of giving him rice gave him a handful of ashes. The beggar accepted the handful of ashes and when a by-stander asked him why he did so, he replied: "I accept it to encourage the woman in the habit of giving."

1 p.m.

It is in this spirit that I want to accept the offer of the Hon'ble Member if he would stick to it.....

The Hon'ble Sir PROVASH CHUNDER MITTER: On a point of personal explanation, Sir. That is not the spirit which I expected from my friends, and if speeches of that kind continue, I am afraid I shall have to withdraw that offer.

Maulvi TAMIZUDDIN KHAN: I am sorry; I will not continue in that spirit any longer, because I have already had my say. But it is eminently surprising that the Government is swayed by considerations like this. If it thinks that it should in justice to the tenants concede to a particular proposal, then is it not the duty of the Government to stick to that? Will the Government swing like the pendulum of a clock from one end to the other on petty considerations like this? If the Government be amenable to such considerations, they should be very careful to accuse us in future if we are guilty of any inconsistency. I do not like to say anything else in particular. I should only like to add that if the Government accept 10 per cent., then the equivalent of that should not be 5 times the annual rent, but 2½ times. In that view, if Government be still kind enough to hold out the offer, I would ask the permission of the House to amend "5 times" to "2½ times," if the Government be agreeable to that.

The following amendments were called but not moved:—

Khan Bahadur Maulvi MUHAMMAD ISMAIL, Babu AMARENDRA NATH GHOSE, Maulvi KASIRUDDIN AHAMAD and Maulvi KADER BAKSH to move that in clause 23 in the proposed section 26D(e)—

(i) in lines 2 to 6, the words "to twenty-five per cent. of the value thereof as determined by the Court for the purposes of stamp duty for the grant of probate or letters of administration, or," and

(ii) in line 8, the words "whichever is greater"

shall be omitted.

Babu SACHINDRA NARAYAN SANYAL to move that in clause 23, in the proposed section 26D (*e*), for the words "twenty-five per cent." the words "thirty per cent." and for the words "six times" the words "ten times" shall be substituted.

Babu ROMES CHANDRA BACCHI: I formally move that in the proposed section 26D (*e*), lines 2 and 3, for the words "twenty-five per cent. of the value thereof" and in line 6 for the words "six times the annual rent" the words "twenty per cent. of the value thereof" and "five times the annual rent," respectively, shall be substituted.

Mr. J. M. SEN GUPTA: May I make a point clear, Sir? So far as we are concerned, we will support amendment No. 518, but in case that it is lost, we will support No. 525.

Babu AKHIL CHANDRA DATTA: I formally move that in clause 23, in clause (*e*) of the proposed section 26D, line 2, for the words "twenty-five" the word "twenty" shall be substituted.

The following amendments were called but not moved:—

Mr. SYED MD. ATIQULLAH to move that in clause 23, in the proposed section 26D(*e*), line 2, for the words "twenty-five" the word "fifteen" shall be submitted.

Kazi EMDADUL HOQUE to move that in clause 23 in the proposed section 26D(*e*), line 2, for the words "twenty-five" the words "twelve and a half" shall be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Maulvi Abul Kasem and with your permission I formally move that in clause 23, in the proposed section 26D(*e*), for the words "twenty-five per cent." the words "ten per cent." be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Babu Jitendralal Bannerjee, may I have your permission to move the amendment that stands in his name?

Mr. PRESIDENT: Have you got the member's consent?

Khan Bahadur Maulvi AZIZUL HAQUE: No.

Mr. PRESIDENT: You had better not move it.

The following amendment was not moved:—

Babu JITENDRALAL BANNERJEE to move that in clause 23 in the proposed section 26D(*e*)—

(*i*) in line 2, for the words "twenty-five" the word "five";

(*ii*) in line 6, for the words "six times" the words "an amount equal to"; and

(*iii*) in line 8, for the word "greater" the word "less,"

shall be substituted.

Khan Bahadur Maulvi EKRAMUL HUQ: I formally move that in clause 23, in the proposed section 26D(*e*)—

(*i*) in line 2, for the words "twenty-five" the word "five";

(*ii*) in line 6, for the words "six times" the word "twice"; and

(*iii*) in the last line, for the word "greater" the word "less" be substituted.

The following amendment was called but not moved:—

Maulvi ABUL KASEM to move that in clause 23, in the proposed section 26D(*e*), lines 2 and 3, for the words "twenty-five per cent." the words "five per cent." shall be substituted, and in line 6 for the words "six times" the words "three times" shall be substituted.

Maulvi NURUL HUQ CHAUDHURI: I formally move that in clause 23, in the proposed section 26D(*e*), line 2, for the words "twenty-five" the word "two" shall be substituted.

May I ask you, Sir, if I shall have an opportunity of moving my amendment No. 519?

Mr. PRESIDENT: That amendment has failed. It is governed by the decision arrived at on amendments Nos. 349 and 394.

Maulvi NURUL HUQ CHAUDHURI: With due deference, may I just point out to you that the principle involved is quite different; here it relates to gifts and there it related to all transfers other than gifts.

Mr. PRESIDENT: I am very sorry; I can not revise my decision.

The following amendments were called but not moved:—

Maulvi SYED NAUSHER ALI to move that in clause 23, in the proposed section 26D(*e*), for the words "twenty-five" the word "one" be substituted.

Mr. SYED MD. ATIQULLAH to move that in clause 23 in the proposed section 26D(*e*), lines 2 to 5, for the words beginning with "twenty-five per cent. of the value thereof" and ending with "administration" the words "rupee one only" shall be substituted.

Mr. SYED MD. ATIQULLAH to move that in clause 23, in the proposed section 26D(*e*), lines 6 to 8, the words beginning with "or to six times" and ending with "greater" shall be omitted.

Maulvi NURUL HUQ CHAUDHURI: I formally move that in section 26D, in clause (*e*), for the words "six times" the words "ten per cent. of" shall be substituted.

Maulvi NURUL HUQ CHAUDHURI: I formally move that in section 26D, in clause (*e*), for the word "greater" the word "less" shall be substituted.

Maulvi NURUL HUQ CHAUDHURI: I formally move that in clause 23, in the proposed section 26D(*e*), after the first paragraph of clause (*e*), the following proviso shall be added namely:—

"Provided that the fee shall in no case be less than two rupees or more than ten rupees."

Maulvi NURUL HUQ CHAUDHURI: I formally move that in clause 23, in the proposed section 26D(*e*), the first proviso shall be omitted.

The Hon'ble Sir PROVASH CHUNDER MITTER: I have only one word to say about amendment No. 518. I have more than once told the House that on questions of principle there is no difference, and there cannot be any difference whatsoever between sale, gift and bequest, but there is this difference from the practical point of view, namely, in the case of gift it may be abused, inasmuch as a transaction which is really a transaction of sale can be put forth as a transaction of gift, and that is why Government are unable to accept the suggestion of reduction of percentage on gifts. About bequest on principle, there cannot be any difference, and I said this at least thrice. But blinded as some people are by the communal aspect—of their own importation—of the question, repetition apparently has no effect on them. If you suppose that there is a communal motive indulging this concession and if you think that because the Revenue Member for the time being happens to be a Hindu, and he is trying to take some advantage for his community, then you do not take the concession in the spirit in which it is offered and in that case I am entitled to withdraw the promise that I have made. I am not actuated by any spirit of communalism. I stand by the promise

that I have made. Although I can well understand that any amount of assurance will not remove the suspicion of communalism from the minds of certain people who are themselves soaked with that spirit. I am glad, however, to acknowledge that at least one prominent member of that community, Mr. Fazl-ul Huq, referred to my offer as a generous one. I hope, however, the member who was so affected by his spirit of suspicion as not to see the very words of the clause.....

Maulvi NURUL HUQ CHAUDHURI: On a point of order, Sir. Is the Hon'ble Member entitled to refer to any member as the member, or this member?

The Hon'ble Sir PROVASH CHUNDER MITTER: I am not referring to any gentleman by name. I referred to one particular gentleman by name and that was not to his detriment. To turn to the clause itself, it is quite clear. It refers to the percentage of the value determined for the grant of probate.....

Maulvi TAMIZUDDIN KHAN: But, Sir, did I not say that I was sorry for what I had said.

The Hon'ble Sir PROVASH CHUNDER MITTER: I was trying to give a general explanation for certain attacks on me. I did not refer to anyone by name. However, Sir, I stand by what I promised, irrespective of the ungenerous and unmerited attacks flung at me personally.

Khan Bahadur Maulvi AZIZUL HAQUE: Mr. Tamizuddin Khan has said that if you accept 10 per cent., then correspondingly 5 per cent. should be decreased to 2½ per cent.

The Hon'ble Sir PROVASH CHUNDER MITTER: We have no objection to that, provided the House accepts it. That is only logical.

Maulvi SYED NAUSHER ALI: Sir, I had no intention of speaking. But, Sir, I do not understand how he could accuse us of communalism.

The Hon'ble Sir PROVASH CHUNDER MITTER: I never ascribed communal suspicion to all Muhammadan members, but I spoke generally with reference to some ungenerous speeches, and if certain speakers thought that the cap fitted them, I could not help it.

Maulvi SYED NAUSHER ALI: What I was going to submit is this: Sir Provash Chunder Mitter got nervous at the moment. I may assure the House that I remember correctly that whenever Sir Provash referred to the members representing the tenants he clearly said "the Muhammadan representatives"; this he should not have done. That

is one of the points I take exception to. There is another point, and that is this: While speaking on salami and explaining the position of Government, Sir Provash referred to Mr. Fazl-ul-Huq and Khan Bahadur Azizul Haque by drawing their attention to the fact that in Chittagong a very large majority of the owners of Noabad taluks were Muhammadans. What was the necessity of his referring to that? That clearly indicates that something looms behind his mind.

The Hon'ble Sir PROVASH CHUNDER MITTER: On a point of personal explanation, Sir. May I say this, that whenever I referred to the Muhammadans as friends of the tenants, I did so because I found that speeches were delivered by many of my Muhammadan friends in favour of the tenants. When I referred to the question of Noabad taluks in Chittagong and elsewhere, I referred to them only to show that a particular community would be affected. I never made any distinction between Hindus and Muhammadans throughout my public life, and I may assure the House that so long as I occupy this chair I will never make any distinction between one community and another.

Khan Bahadur Maulvi AZIZUL HAQUE: I regret a certain amount of passion has been generated both in the speeches of the members as well as in the reply of the Hon'ble Member in charge. I think it my respectful and humble duty to remind the Hon'ble Member that it will be better for him if he does not refer to any communal passion in future.

Mr. PRESIDENT: After the explanation which the Hon'ble Member has given, I think it is clear that he meant no slight and bears no ill-feeling towards any particular community. I think that explanation should be accepted in good grace.

Khan Bahadur Maulvi AZIZUL HAQUE: All I was saying was that it would be better for the Hon'ble Member if he would not refer to any communal matters in future. It will be equally better if the members as well follow suit.

Maulvi TAMIZUDDIN KHAN: The Hon'ble Member has said that Government would have no objection to having the word "five" substituted by "two and a half," provided the House agrees to it. I, therefore, formally beg leave of the House to amend my motion accordingly.

The motion that permission be granted to Maulvi Tamizuddin Khan to amend his amendment No. 518 in the following way, namely, that for the word "five," in line 7 of the amendment, the words "two and a half" be substituted, was then put and agreed to.

1-15 p.m.

The motion standing in the name of Maulvi Tamizuddin Khan was then put in the following amended form and agreed to:—

"That in clause 23 in the proposed section 26D, for clause (*e*), the following shall be substituted, namely: '(*e*) in the case of a transfer by bequest of a holding or a portion or share thereof to ten per cent. of the value thereof as determined by the Court for the purposes of stamp duty for the grant of probate or letters of administration or to two and a half times the annual rent of the holding or of the portion or share transferred whichever is greater.'"

The motions standing in the names of Babu Romes Chandra Bagchi and Maulvi Nurul Huq Chaudhuri being consequential fell through.

The following amendment was called but not moved:—

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in Bill clause 23, after the word "Court," line 4, in proposed section 26D (*e*), the words "upon notice to the landlord or his common agent, if any" shall be added.

The motion that in clause 23, in the proposed section 26D(*e*), the first proviso shall be omitted, was then put and lost.

The following amendments were called but not moved:—

Maharaja JOGINDRA NATH RAY of Nator and Babu SACHINDRA NARAYAN SANYAL to move that in clause 23, the second proviso to the proposed section 26D(*e*) be omitted.

Srijut TARAKNATH MUKERJEA to move that in clause 23, in the second proviso to the proposed section 26D (*e*), lines 1 and 2, for the words "transfer fee shall not be payable," the words "transfer fee shall be 2 per cent. of the value thereof" shall be substituted.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 23, in the second proviso to the proposed section 26D (*e*), before the word "transfer" in line 3, the word "bona fide" be inserted.

Mr. PRESIDENT: Amendments Nos. 548 and 559 will be taken up with No. 488. Amendments Nos. 549-556 will now be taken up together. Maulvi Syed Nausher Ali will now move the third part of amendment No. 549.

Maulvi SYED NAUSHER ALI: I beg to move that in clause 23, in the second proviso to the proposed section 26D(*e*), line 6, for the word "three" the word "five" be substituted.

Sir, the object is quite clear. The proviso in the Bill says—

"Provided also that the landlord's transfer fee shall not be payable in the case of a transfer by bequest or gift in favour of the husband or wife of the testator or donor, or of any relation by consanguinity within three degrees of such testator or donor."

The reason for the substitution is obvious and requires no explanation of speech. I want to extend the number of persons to whom gift or bequest may be made without payment of any landlord's fee. Sir, "three" degrees seem to comprise a very small number of men and, therefore, I have suggested "five." Without running the risk of being communal, I wish to draw the attention of the Hindu members to the fact that I have intentionally suggested "five," because it corresponds with one of the provisions of the Hindu Law. We know that sapinda extends up to the seventh degree and then in regard to marriage it extends up to the fifth degree on the mother's side.

Babu AKHIL CHANDRA DATTA: That's not it.

Maulvi SYED NAUSHER ALI: Whatever it may be.....

Mr. PRESIDENT: Please address your words to me. Members should not fling words at each other in this fashion.

Maulvi SYED NAUSHER ALI: Sir, what I want to submit is that persons up to the fifth degree are regarded as close relations, and they should be placed within the proviso. I know that Hindu gentlemen regard even persons within the seventh degree to be relations, or they even go further than that. I, therefore, expect the support of my Hindu colleagues, zamindars or raiyats in this matter. With these remarks, I commend my amendment to the acceptance of the House.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh: I beg to move that in clause 23, in the second proviso to the proposed section 26D(*e*), lines 5 to 7, the words "or of any relation by consanguinity within three degrees of such testator or donor" and the "Explanation" to the said proviso shall be omitted.

Sir, three degrees seem to be too wide. With this remark, I formally move the amendment.

The following amendment was called but not moved:—

Srijut JOGENDRA NATH MOITRA to move that in clause 23, in the proposed section 26D(*e*), second proviso, lines 5, 6 and 7, for the words "or of any relation by consanguinity within three degrees of such testator or donor" the words "or of any son or daughter" shall be substituted.

Mr. SATYENDRA CHANDRA GHOSH MAULIK: I formally move that in clause 23, in the second proviso to proposed section 26D(*e*), for the words "or of any relation by consanguinity within three degrees of such testator or donor" the words "or his son" shall be substituted.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: I beg to move that in clause 23, in the proposed section 26D(*e*), second proviso, lines 5 and 6, for the words "of any relation by consanguinity with three degrees" the words "any other immediate heir" be substituted.

Sir, in the amending Bill the terms are so widened that almost everybody and anybody can be included, for it is held that the landlord's fees on transfer by tenant cannot be realised, if the transfer is made by bequest or gift in favour of the husband, wife or any relation by consanguinity within three degrees of the testator or donor. This would imply a large circle. Upwards it would extend to grandfather, grandmother and so on. Downwards it would extend to grandson, by the direct line, or even to the daughter's son. Literally, it would extend to the cousin, on both sides even to the uncle and a host of other people, too numerous here to mention. The difficulty that would arise would be very great in administering the law. To ascertain the exact relationship of the person to the transfer would entail a great deal of investigation and would be a frequent cause of litigation on both sides.

To avoid all this harrassment and unnecessary expense, especially to landlord, who would himself be forced to investigate or, on the other hand, would be forced to take to litigation on a very vexed question, I propose my amendment. I limit the whole case of transference only to the immediate line, whoever he may be. He may be the son, grandson, great grandson, or any other person. There be no limit to the three degrees of consanguinity. It may be that the person inheriting would be of the fourth degree, or even further. All that my amendment implies is that at the time of transfer the person inheriting should be of the immediate line.

I trust the amendment on account of its "sweet reasonableness" will appeal to the members of the House, and it is one that avoids all doubt and litigation as between landlord and tenant. I commend it to the consideration of the members of this Council.

The following amendments were called but not moved:—

Srijut TARAKNATH MUKERJEA to move that in clause 23, in the second proviso to the proposed section 26D(*e*), line 6, for the word "three" the word "two" shall be substituted.

Mr. JOGESH CHANDRA GUPTA to move that in clause 23, in the second proviso to the proposed section 26D(*e*), line 6, after the word "degrees" the words "if he is a legal heir" shall be inserted.

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 23, to the second proviso to the proposed section 26D(*e*), the following shall be added, namely, "or a son-in-law or daughter-in-law or a son adopted by a Muhammadan."

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I beg to oppose all the amendments which have been moved. The proviso in the Bill exempts bequests and gifts made to a husband, wife or a consanguinee within three degrees from any landlord's fee. The amendments on the side of the landlords propose, firstly, to omit the exemption altogether, and next to limit it to the son. The former has, I find, been withdrawn. Good. On the other hand, there have been certain amendments from the side of the tenants, proposing to extend the exemption to five degrees of consanguinity.

Regarding, first, the amendments which propose to limit the exemption to son and daughter only, it is obvious that the same reasons apply equally to grand-children and great-grand-children, who would be natural heirs. The underlying idea is that cases in which a relation would ordinarily get the property by natural succession should be exempted from transfer fee. It will be unnatural to let a landlord, or anybody interfere with the grandson or great-grandson, just as much as in the case of the son, getting the property of his grand-father. It is immaterial whether this happens by mere succession or as a result of a bequest or gift, and it is reasonable that such bequests or gifts should be free from any charge of transfer fee. It has been proposed by some members that the exemption should be extended to consanguinees up to five degrees. It must be admitted that the limit of three degrees is artificial. But it is still a reasonable limit for all practical purposes and has been adopted as a good workable basis. As the other amendments have not been moved, I do not think I should say anything on them.

On these grounds, Sir, I oppose all these amendments.

The motion of Maulvi Syed Nausher Ali was then put and lost.

The motion of Maharaja Shashi Kanta Acharjya Chaudhuri, of Muktagacha, Mymensingh, was then put and lost.

The motion of Mr. Satyendra Chandra Ghosh Maulik was then put and lost.

The motion of Raja Bhupendra Narayan Sinha Bahadur, of Nashipur, was then put and lost.

Adjournment.

The Council was then adjourned till 2-45 p.m. on Monday, the 27th August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Monday, the 27th August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh), in the Chair, the Hon'ble Mr. A. Marr, the Hon'ble Sir Provash Chunder Mitter, the Hon'ble Mr. W. D. R. Prentice, and 109 nominated and elected members.

Starred Questions

(to which oral answers were given).

Sub-registry office at Galimpur in Tippera.

*76. **Maulvi ASIMUDDIN AHAMAD:** (*a*) Is the Hon'ble Minister in charge of the Department of Education (Registration) aware that a new sub-registry office is going to be established at Galimpur village in police-station Chandina, district Tippera?

(*b*) Is it a fact that the place in question has been recommended by the District Magistrate for the establishment of the said registry office?

(*c*) Is the Hon'ble Minister aware of the fact that two petitions signed by numerous people have been submitted to the proper authority to establish the proposed sub-registry office at Barura Bazar, a place situated in the centre of the said police-station with post office, school, madrasah, zamindari *cutcherry* and the biggest market in the said thana?

(*d*) Is it a fact that in pursuance of the letter of the District Magistrate, the President of the Dehora Union Board (Barura), police-station Chandina, informed him that a building was available at the Barura Bazar at the rent of Rs. 40 per month for the purpose of the registry office?

(*e*) Is it a fact that the Subdivisional Magistrate of Sadar subdivision visited Barura Bazar for the purpose?

(*f*) Will the Hon'ble Minister be pleased to state whether a final decision has been arrived at by the department regarding the proposed establishment of the said sub-registry office?

SECRETARY to GOVERNMENT, DEPARTMENT of EDUCATION (Mr. A. J. Dash): (*a*) No.

(*b*) Government or the department have received no such recommendation.

(*c*) No petition has been received by Government or the department.

(*d*) and (*e*) Government have no information.

(*f*) Does not arise.

Détenu Trailakhya Chakravarty.

*77. **Mr. D. N. ROY:** Will the Hon'ble Member in charge of the Political Department be pleased to state—

(*i*) whether détenu Srijut Trailakhya Chakravarty has been interned in a malarious place;

(*ii*) the present condition of his health; and

(*iii*) whether the Government propose to release him in the near future?

MEMBER in charge of POLITICAL DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (*i*) No.

(*ii*) He was examined in July, 1928, and the state of his health was found to be good.

(*iii*) Government are not prepared to publish their intentions.

Mr. JOGESH CHANDRA GUPTA: Has the Government changed in any way the intention as foreshadowed in His Excellency the Governor's speech?

The Hon'ble Mr. W. D. R. PRENTICE: No.

Bidyadhari.

*78. **Mr. JOGESH CHANDRA GUPTA:** (*a*) Will the Hon'ble Member in charge of the Department of Irrigation, be pleased to lay on the table a statement showing—

(*i*) the total amount spent by the Government of Bengal for the improvement of the Bidyadhari;

(*ii*) the total amount, if any, contributed by the Calcutta Corporation in this connection; and

(*iii*) whether the dredging operations improved the condition of the River Bidyadhari?

(*b*) If the answer to (*a*) (*iii*) is in the affirmative, will the Hon'ble Member be pleased to state how long the improvement lasted?

(*c*) Will the Hon'ble Member be pleased to state whether spurs were erected by the Irrigation Department on either side of the river?

SECRETARY to GOVERNMENT, DEPARTMENT of IRRIGATION (Mr. W. H. Nelson): (*a*) (*i*) Rs. 16,80,578.

(*ii*) Rs. 3,00,000.

(*iii*) Dredging improved the Bidyadhari river very temporarily.

(*b*) Two months.

(*c*) Yes—only in those reaches of the river, where it was unnecessarily wide.

Primary schools in Pabna.

***79. Srijut JOGENDRA NATH MOITRA:** (*a*) Will the Hon'ble Minister in charge of the Department of Education be pleased to lay on the table a statement showing for the years 1925, 1926 and 1927—

(*i*) the number of muktabs and Moslem primary schools aided by the Pabna District Board;

(*ii*) the total amount spent on them each year;

(*iii*) the number of primary schools that receive their grants as Hindu schools;

(*iv*) the total amount spent on them each year;

(*v*) the number of primary schools for the depressed classes; and

(*vi*) the amount spent on them each year?

(*b*) Is the Hon'ble Minister aware that instructions were issued by the District Board of Pabna to some of the pundits of the primary schools to gradually adopt the "Muktab curriculum" in preference to the general curriculum in those primary schools where the number of Moslem students exceed 50 per cent.?

(*c*) Is the Hon'ble Minister aware that on account of such innovation the Hindu guardians in some cases had to withdraw their boys from the schools?

(*d*) If the answer to (*b*) is in the affirmative, will the Hon'ble Minister be pleased to state why such instruction was issued?

Mr. A. J. DASH:

	Year.			Boys' muktabs.	Girls' muktabs.	Total.
(a) (i)	1925	..	..	305	222	527
	1926	..	..	382	247	629
	1927	..	..	357	230	587
				Rs.	Rs.	Rs.
(ii)	1925	..	..	19,919	7,958	27,877
	1926	..	..	25,898	11,654	37,552
	1927	..	..	27,547	10,952	38,499

(iii) There are no primary schools denominated as Hindu schools. The majority of the Hindu boys attend ordinary primary schools, of which the number is given below:—

	Year.			Boys' schools.	Girls' schools.	Total.
	1925	..	..	398	149	547
	1926	..	..	320	117	437
	1927	..	..	276	122	398
				Rs.	Rs.	Rs.
(iv)	1925	..	..	28,294	7,243	35,537
	1926	..	..	27,719	8,008	35,727
	1927	..	..	22,796	6,361	29,157
(v)	1925	..	..	Nil	Nil	Nil
	1926	..	..	1	Nil	1
	1927	..	..	4	2	6
				Rs.	Rs.	Rs.
(vi)	1925	..	..	Nil	Nil	Nil
	1926	..	..	48	Nil	48
	1927	..	..	194	54	248

(b) It is reported by the Chairman, District Board, Pabna, that a letter was issued to the Head Pundit, Lakshmipur B. L. P. School, suggesting adoption of the muktab curriculum in his school.

(c) No such case has been reported.

(d) Orders regarding the teaching of the Muktab course in one particular board primary school were issued by the Chairman as all the pupils of the school were Muhammadans.

Maulvi SYED ABDUR RAUF: Will the Hon'ble Member be pleased to state if there is any Government circular to the effect that where Muhammadan boys predominate in any primary school the Muhammadan curriculum should be taught in place of the general curriculum?

Mr. A. J. DASH: I wish to have notice of this.

Maulvi ABDUL KARIM: Is there any instance of Hindu boys attending a maktab?

Mr. A. J. DASH: I want notice of this question.

Restrictions on the use of buffaloes for draught purposes in Calcutta.

*80. **Mr. J. M. SEN GUPTA:** Will the Hon'ble Member in charge of the Police Department be pleased to state—

(*i*) the date when the notification prohibiting buffalo carts from plying for hire in Calcutta during the months of July-August-September 1928 between the hours of 12 noon to 3 P.M., was promulgated and published in the *Gazette;*

(*ii*) whether it is not a fact that there was a notification of a similar nature covering the months of April, May and June;

(*iii*) (*a*) whether the opinion of the Veterinary Adviser to Government, or the Principal of the Veterinary College, was taken on this question of extension?

(*b*) if the answer is in the affirmative, then whether it was taken before the notification for July, August and September;

(*iv*) whether it is a fact that there was no notification of this nature covering the months of July-September in the previous year;

(*v*) whether it is a fact that expert opinion was sought on the question whether it is at all cruel to employ buffaloes in Calcutta in any time, during winter, summer or monsoon;

(*vi*) whether any opinion was taken on the question whether it was more cruel to employ buffaloes as draught animals in winter than during the monsoon. If so, will the Hon'ble Member be pleased to lay the opinion on the table;

(*vii*) whether it is not a fact that the object of Bengal Act VII of 1926, under which this action against buffalo carts was taken, was not to drive buffalo carts entirely out of Calcutta, but only to stop their plying during the hottest months of the year;

(*viii*) whether it is not a fact that during the months of July, August, September there is a copious rainfall in Calcutta;

(*ix*) whether it is not a fact that during these months, *i.e.*, during the period of monsoon buffaloes feel least discomfort;

(*x*) whether it is not a fact that there has been hardly a day since the beginning of July last when there had been no rain in Calcutta;

(*xi*) whether since the beginning of July most of the days have been cloudy and without sunshine; and

(*xii*) whether the effect of this notification has not been to deprive the buffalo cart owners of using the carts during the most busy and profitable season of jute carrying?

MEMBER in charge of POLICE DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (*i*) Notification No. 3093 Pl., dated the 18th June, 1928, was published in the *Gazette* of the 21st June, 1928.

(*ii*) Yes.

(*iii*) (*a*) Yes.

(*b*) Yes.

(*iv*) Yes.

(*v*) Yes.

(*vi*) In accordance with the promise made to a deputation on 31st July, 1928, the Veterinary Adviser was consulted whether the period and hours prescribed by the notification referred in the answer to (*i*) above could be shortened without cruelty to the animals. After a discussion with the Hon'ble Member, Police Department, who explained to him the points put forward by the deputation, the Veterinary Adviser recorded the following opinion:—

"I do not consider that shortening the hours or months will have any effect on the cruelty.

I have recorded as my opinion that it is cruelty to work these animals in any city under any circumstances, but that if they have to be worked, the only time they should be so used is between 6 P.M. and 5 A.M. (the latter hour could be extended, if necessary). I see no reason to alter that opinion.

It is not solely a question of heat affecting them, although that is serious enough and undoubtedly causes intense distress. One must also remember that its feet show that it was intended to move about in soft ground, not having shoes affixed for draught purposes along tarred or macadamised roads, moreover its skin having no protective hair covering was obviously intended to be kept either in the shade (jungle) or immersed in water. In a natural state the animal lies up during the heat of the day, feeding and moving in the evening and night."

(*vii*) One of the objects was to penalise the cruel practice of using buffaloes for draught purposes in the middle of the day in the hot season.

(*viii*), (*x*), (*xi*) The member is referred to the reports of the Meteorological Department.

(*ix*) The member is referred to the opinion of the Veterinary Adviser given in reply to (*vi*).

(*xii*) No; they are only prevented from using them between 12 noon and 3 P.M. daily.

Buffalo cart traffic in Calcutta.

*81. **Mr. J. M. SEN GUPTA:** Will the Hon'ble Member in charge of the Police Department be pleased to state—

(*i*) whether it is the policy of the Government to stop altogether the use of buffaloes in Calcutta as draught animals;

(*ii*) whether there are about 8,000 buffalo carts and about 20,000 people dependent on them for their subsistence in the shape of carters, owners, labourers and their families and, if not, will the Hon'ble Member state approximate figures;

(*iii*) whether any reasonable time has been given to buffalo cart owners to exchange their carts and buffaloes for bullock carts and bullocks?

(*iv*) Is the Government aware that if reasonable time be not given to buffalo cart owners to get bullock carts in place of buffalo carts both buffalo-bullock carts will be driven out of the streets of Calcutta and the market will be captured by motor lorries?

The Hon'ble Mr. W. D. R. PRENTICE: (*i*) No, the policy of Government is the protection of buffaloes from cruelty.

(*ii*) Government have been unable to obtain recent statistics showing the number of buffalo carts in Calcutta. In 1926-27 the number registered was under 4,000. Government have no information regarding the number of people dependent on buffalo carts for their subsistence.

(*iii*) This is a matter of opinion, but Bengal Act VII of 1926 came into force on 1st October, 1926, and restrictions under Bengal Act I of 1920 were first enforced from 1st April, 1927.

(*iv*) No.

Mr. F. E. JAMES: Will the Hon'ble Member be pleased to state if Government have received representations advocating the abolition of the use of buffaloes as draught animals in Calcutta?

The Hon'ble Mr. W. D. R. PRENTICE: Yes.

Mr. F. E. JAMES: Will the Hon'ble Member be pleased to state if Government have considered those representations and come to any decision on them?

The Hon'ble Mr. W. D. R. PRENTICE: The point under consideration at present is the reduction of load. The question of the prohibition of the use of buffaloes as draught animals has not yet been considered. I doubt whether under the Act we can do so.

Mr. F. E. JAMES: May I ask if the Hon'ble Member is not of opinion that the best means of protecting them from cruelty is the abolition of their use as draught animals in Calcutta?

The Hon'ble Mr. W. D. R. PRENTICE: That is a matter of opinion.

Babu BEJOY KRISHNA BOSE: May we know who were the members of the deputation?

The Hon'ble Mr. W. D. R. PRENTICE: Mr. A. C. Banerjee, Mr. Abul Kasem and various other people together with another Muhammadan member of this Council whose name I forget.

Unstarred Questions

(answers to which were laid on the table).

Dress to be worn on certain occasions.

64. Babu AMULYA CHANDRA DATTA: (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state whether any dress is prescribed for use by officers employed in Government offices, and also by people attending courts, levee and durbar?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state the nature of the dress so prescribed?

(*c*) Are the Government considering the desirability of issuing a circular declaring that for Bengali Hindus *dhoti*, *piran* (shirt), and *chadar* will be regarded as official, levee or durbar dress?

The Hon'ble Mr. W. D. R. PRENTICE: (*a*) As stated in reply to unstarred question No. 25 in the present session, no dress is prescribed for gazetted officers attending office and courts, except for certain judicial officers when presiding on the bench. No dress is prescribed for ministerial officers or for non-officials other than legal practitioners attending criminal, revenue or civil courts. For levees and durbars it is usual to prescribe the dress to be worn in the notifications (if any) announcing the functions, and also to indicate it on the invitation cards.

(*b*) The rules regarding the dress to be worn by officials are contained in the Government of India, Home Department Notification No. F. 215-23 of 31st May, 1923. In the case of non-officials, it is usual to prescribe morning or evening dress for non-official Europeans and durbar dress for Indian gentlemen.

(*c*) No.

Dr. KUMUD SANKAR RAY: Will the Hon'ble Member be pleased to state why he considers dhoti, chaddar and piran to be unfit for court dress?

The Hon'ble Mr. W. D. R. PRENTICE: I have not expressed any such opinion.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state if Government have any serious objection to durbaris using dhoti, chaddar and piran especially during the hot weather?

The Hon'ble Mr. W. D. R. PRENTICE: I am afraid the question has not yet been considered.

Srijut BIJAY KUMAR CHATTERJEE: When will the Government consider this question?

The Hon'ble Mr. W. D. R. PRENTICE: When the need arises.

Deputy Commissioner of Police, North District, Calcutta.

65. Dr. PRAMATHANATH BANERJEA: (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to state—

(*i*) whether it is a fact that all Commissioners of Police, Calcutta, up to the year 1910 or so, used to hear *openly*, at Lalbazar, the "reports" of all cases relating to commission of offences in the different sections of the town and suburbs;

(*ii*) whether it is a fact that, since 1910 or so, all the Deputy Commissioners of Police in succession have adhered to the said practice and have been hearing "reports" *openly* in the "report rooms";

(*iii*) whether it is a fact that the present Deputy Commissioner of Police, North District, Calcutta, does not adhere to the said practice, which has hitherto been in vogue; and

(*iv*) whether it is a fact that he hears his "reports" at Jorabagan within closed doors?

(*b*) Is the Hon'ble Member aware that the said Deputy Commissioner of Police, North District, has been invested with certain judicial powers, which he has to exercise at the time of the hearing of the "reports"?

(*c*) If the answer to (*b*) is in the affirmative, will the Hon'ble Member be pleased to state why the said Deputy Commissioner of Police is allowed to exercise those powers in a room closed to the public?

The Hon'ble Mr. W. D. R. PRENTICE: (*a*) (*i*) Reports were heard in a room to which those members of the public who were connected with the case under hearing were ordinarily admitted.

(*ii*) Deputy Commissioners have adhered to the procedure stated in the reply to (*i*).

(*iii*) No.

(*iv*) No.

(*b*) He exercises limited powers as a Magistrate during part of the time spent on hearing reports.

(*c*) The report room is not closed to the public, but space is so limited that only the parties concerned in the case and the pleaders appearing for the parties are ordinarily admitted while a particular case is under discussion.

Assistant Registrars of Co-operative Department.

66. Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: Will the Hon'ble Member in charge of the Department of Agriculture and Industries be pleased to state—

(*i*) who are the Assistant Registrars of Co-operative Department in all the divisions; and

(*ii*) how many days these Registrars go out on tour in a year?

SECRETARY of DEPARTMENT of AGRICULTURE and INDUSTRIES (Mr. R. N. REID): (*i*) The member is referred to page 496 of the Bengal Quarterly Civil List corrected up to 1st July, 1928.

(*ii*) The member is referred to table I of Appendix to the Annual Reports of the Co-operative Department.

Enhancement of rent.

67. Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: Will the Hon'ble Minister in charge of the Department of Revenue be pleased to lay on the table a statement showing—

(*i*) the number of cases where the rent has been enhanced since the time of the Permanent Settlement to the present time (1927);

(*ii*) the total amount of enhancement against the original rent;

(*iii*) how many cases for the enhancement of rent have been instituted in Bengal since 1915;

(*iv*) how many of them have been decreed; and

(*v*) the average rate of enhancement allowed by the Court?

MINISTER in charge of DEPARTMENT of REVENUE (LAND REVENUE) the Hon'ble Sir Provash Chunder Mitter): The information required in (*i*) and (*ii*) is not available.

(*iii*), (*iv*) and (*v*) Government do not consider that the advantage of compiling and printing a statement furnishing the information required in (*iii*), (*iv*) and (*v*) would be commensurate with the labour and expense involved.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

The following amendment was called but not moved:—

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 23, at the end of the second proviso to the proposed section 26D (*e*), after the word "Donor" the following shall be added, namely, "unless the transfer by bequest or gift is made to defraud or deprive some other legal heir or heirs."

Maulvi ASIMUDDIN AHAMAD: I beg to move that in clause 23, in the proposed section 26D (*c*), the following shall be inserted after the "Explanation" to section 26D, namely:—

"Provided also that in the case of a transfer by exchange of a holding or a portion or share of a holding, no landlord's fee is to be paid by the parties."

The following amendment was called but not moved:—

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 23, the proposed section 26E, shall be omitted.

Rai MAHENDRA NATH GUPTA Bahadur: I beg to oppose this motion formally. It means that no landlord's fee should be chargeable in the case of exchanges of part holding. In view of the decision already arrived at it follows that there should be landlord's fee as has been fixed and so I oppose it.

The motion that in clause 23, in the proposed section 23D (*c*), the following shall be inserted after the "Explanation" to section 26D, namely:—

"Provided also that in the case of a transfer by exchange of a holding or a portion or share of a holding no landlord's fee is to be paid by the parties."

was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Karim, Maulvi Abdul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahim, Sir Abd-ur-
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Bagshi, Babu Romes Chandra.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Burge, Mr. B. E. J.
Casselis, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Lala, Babu Sarada Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Prevash Chunder.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakenath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Dr. Bidhan Chandra.
Ray, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Roy Mr. Kiran Sankar.
Roy Chaudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

The Ayes being 15 and the Noes 54 the motion was lost.

Maulvi NURUL HUQ CHAUDHURI: I beg to move that in clause 23, in the proposed new section 26E—

(*1*) the words "or a portion or share thereof" and the words "or of the portion or share thereof" in sub-section (*1*) and the words "or of a portion or share thereof" in sub-section (*2*) shall be omitted.

Mr. F. A. SACHSE: We oppose it on the same grounds as we opposed the omission of the transfer of a portion or share of a holding from the other sections as well.

The motion of Maulvi Nurul Huq Chaudhuri was then put and lost.

Mr. PRESIDENT: I propose to have one discussion on items Nos. 566, (2), (3) and (4) and 567 to 584.

Maulvi NURUL HUQ CHAUDHURI: I beg to move formally that in clause 23, in the proposed new section 26E—

(2) for the word "twenty-five" in sub-sections (1) and (2) the word "two" shall be substituted;

(3) for the words "six times" in sub-section (1) the words "ten per cent. of" shall be substituted;

(4) for the word "greater" in sub-section (1) the word "less" shall be substituted.

Maulvi KASIRUDDIN AHAMAD: I beg to move that in clause 23, in proposed section 26E (1)—

(i) in lines 17 and 18 for the words "calculated at the rate of twenty-five per cent. of the purchase-money, or" the words "amounting to" shall be substituted; and

(ii) in lines 21 and 22 the words "whichever is greater" shall be omitted.

The following amendments were called but not moved:—

Khan Bahadur Maulvi MUHAMMAD ISMAIL and Maulvi KADER BAKSH to move that in clause 23, in the proposed section 26E (1)—

(i) in lines 17 and 18, the words "twenty-five per cent. of the purchase-money, or" and

(ii) in lines 20 and 21, the words "whichever is greater"

shall be omitted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, and Khan Bahadur Maulvi AZIZUL HAQUE to move that in clause 23, in section 26E, for the words "twenty-five per cent." and "six times" wherever they occur the words "thirty per cent." and "eight times" shall be substituted.

Babu AKHIL CHANDRA DATTA to move that in cluase 23, in sub-section (1) and (2) of the proposed section 26E, lines 17, 18 and 11, respectively, for the words "twenty-five" the word "twenty" shall be substituted.

Babu ROMES CHANDRA BAGCHI: I beg to move that in clause 23, in proposed section 26E (*1*), in lines 17 to 19, for the words "twenty-five per cent. of the purchase-money or six times the annual rent" the words "twenty per cent. of the purchase-money or five times the annual rent" shall be substituted.

The following amendments were called but not moved:—

Babu AMULYA CHANDRA DATTA to move that in clause 23, in the proposed section 26E—

(*a*) for the words "25 per cent." wherever they occur in section 26E the words "12½ per cent." be substituted; and

(*b*) the words beginning with "or six times the annual rent of the holding sold" up to the words "is greater" be omitted.

Kazi EMDADUL HOQUE to move that in clause 23, in the proposed section 26E (*1*)—

(*a*) in lines 5 and 6 from the bottom, for the word "twenty-five" the words "twelve and a half" shall be substituted; and

(*b*) in lines 4 and 5 from the bottom, for the words "six times" the word "twice" shall be substituted.

3-15 p.m.

Maulvi TAMIZUDDIN KHAN: I move that in clause 23, in proposed section 26E (*1*), lines 17, 18 and 19, for the words "twenty-five per cent. of the purchase-money or six times the annual rent" the following shall be substituted, namely, "ten per cent. of the purchase-money or five times the annual rent."

The following amendment was called but not moved:—

Babu JITENDRALAL BANNERJEE to move that in clause 23, in the proposed section 26E (*1*)—

(*i*) in lines 17 and 18, for the word "twenty-five" the word "five";

(*ii*) in lines 18 and 19, for the words "six times" the words "an amount equal to"; and

(*iii*) in line 21 for the word "greater" the word "less"

shall be substituted.

Khan Bahadur Maulvi EKRAMUL HUQ: I move that in clause 23, in the proposed section 26E (*1*)—

(*i*) in lines 17 and 18, for the word "twenty-five" the word "five";

(*ii*) in lines 18 and 19, for the words "six times" the word "twice"; and

(*iii*) in the penultimate line for the word "greater" the word "less"

shall be substituted.

Maulvi TAMIZUDDIN KHAN: I move that in clause 23, in proposed section 26E (*1*), lines 17, 18 and 19, for the words "twenty-five per cent. of the purchase-money or six times the annual rent" the following shall be substituted, namely, "five per cent. of the purchase-money or three times the annual rent."

Khan Bahadur Maulvi AZIZUL HAQUE: I move that in clause 23, in the proposed section 26E the word "five" be substituted for the word "twenty-five" and that the word "two" be substituted for the word "six" wherever they occur.

Maulvi NURUL HUQ CHAUDHURI: May I move the next amendment standing in the name of Maulvi Syed Nausher Ali on his behalf?

Mr. PRESIDENT: Have you had his permission to do so?

Maulvi NURUL HUQ CHAUDHURI: No.

Mr. PRESIDENT: Then you had better not move it.

The following amendments were called but not moved:—

Maulvi SYED NAUSHER ALI to move that in clause 23, in sub-sections (*1*) and (*2*) of the proposed section 26E, for the word "twenty-five" the word "one" be substituted and for the words "whichever is greater" the words "whichever is less" be substituted, and in sub-section (*1*) of the said proposed section for the words "six times" the words "one half" be substituted.

Maulvi SHAMSUR-RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 23, in the proposed section 26E (*1*), lines 18 to 21, the words "or six times the annual rent of the holding sold or of the portion or share thereof sold whichever is greater" shall be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE: I move that in clause 23, in the proposed section 26E (*1*), in the penultimate line, for the word "greater" the word "less" be substituted.

The Hon'ble Sir PROVASH CHANDRA MITTER: We accept amendment moved by Babu Romes Chandra Bagchi which is consequential to some of the amendments previously passed. I oppose the others.

Mr. PRESIDENT: I should like to put amendment No. 573 first.

The motion of Babu Romes Chandra Bagchi was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Lala, Babu Sarada Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Mozumdar, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijay Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarkar, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Stapleton, Mr. N. E.
Wordsworth, Mr. W. C.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Maque, Khan Bahadur Maulvi Azizul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Asizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

The Ayes being 60 and the Noes 15 the following motion was carried:—

"That in clause 23, in proposed section 26E (*1*), in lines 17 to 19, for the words 'twenty-five per cent. of the purchase-money or six

times the annual rent' the words 'twenty per cent. of the purchase-money or five times the annual rent' shall be substituted."

Mr. PRESIDENT: All the amendments that I placed in the same group fail except amendment No. 584.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and lost.

Mr. PRESIDENT: We will now take the first part of amendment No. 585 and the first part of amendment No. 587.

Mr. KIRAN SANKAR ROY: I move that in clause 23, proposed section 26E, clause (2)—

(i) line 5, after the word "foreclosure" the following words shall be inserted: "upon notice to the landlord or to his common agent, if any."

This amendment is quite obvious and it is very reasonable. It only means that a notice should be given to the landlord at the time when the price is fixed.

Mr. F. A. SACHSE: This is a proposal that the landlords should get a notice in every case before the court proceeds to determine the market value of the holding when making it over to mortgagor absolutely. It is true that under sub-section 3 a notice has to be sent to the landlord, but this is after all the proceedings in court are over. I think the court should be trusted to determine the market value with sufficient accuracy and it is not necessary to protract the proceedings by bringing in the landlord and all the co-sharer landlords. If in future, as we propose in section 26D, only complete usufructuary mortgages can be entered into by raiyats, proceedings of the kind contemplated by section 26E should be very rare. Though unobjectionable in principle I do not think the amendment is really necessary.

The Hon'ble Sir PROVASH CHANDRA MITTER: Sir, there is another point which I would like to put before the Council. As it is in a proceeding between the mortgagor and the mortgagee the former will undoubtedly see that he gets full value and this is the additional reason why we should oppose.

Mr. JOGESH CHANDRA GUPTA: The necessity of this amendment has arisen because when a foreclosure order is made the mortgagor will have no interest left to take any part in the fixing of the market value. The Hon'ble Member in charge contends that the mortgagor will be there to determine the proper value. But that safeguard does not exist in the present case. Of course in other cases when a sale or money decree is made the judgment debtor does not lose the interest in the property until the sale is affected. But in a foreclosure case, which is not a case of sale in pursuance of money decree, that is not the case. This section contemplates the case of a foreclosure and it is well known that when there is a decree for a foreclosure the mortgagor has no voice in the determination of the market value. I hope under these circumstances the Government will be pleased to accept this amendment. As a matter of fact a notice to the landlord has got to be sent hereafter. But if this notice is sent before determining the market value, the two purposes will be served and there will be no under valuation. All that we want is that before making the valuation this notice should be sent.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: [Spoke in support of the amendment which was inaudible at the Reporters' table.]

3-30 p.m.

The Hon'ble Sir PROVASH CHUNDER MITTER: In view of the fact that after all it is a very small matter and that there is some point in it so far as foreclosure proceedings are concerned, we are prepared to accept it.

The following motion was then put and agreed to:—

"That in clause 23, proposed section 26E, clause (2)—

(i) line 5 after the word 'foreclosure' the following words shall be inserted: 'upon notice to the landlord or to his common agent, if any',"

The following amendment was called but not moved:—

Maulvi KADER BAKSH to move that in clause 23, in the proposed section 26E (2)—

(i) in line 6, the words "determine the market value of the holding" be omitted.

Maulvi KASIRUDDIN AHAMAD: I move that in clause 23, in the proposed section 26E (*2*), lines 6 and 7, the words "determine the market value of the holding and" shall be omitted.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, this is a simple matter and I formally oppose it. Unless the court determine the market value, how is the landlord's fee going to be determined? It is necessary, and the clause in the Bill should stand as it is.

The motion of Maulvi Kasiruddin Ahamad was then put and lost.

The following amendments were called but not moved:—

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 23, in the proposed section 26E (*2*), line 6, after the word "determine" the words "after giving notice to the landlord" shall be inserted.

Babu SARAL KUMAR DUTT to move that in clause 23, in the proposed section 26E, sub-section (*2*), the words "after due notice to the landlord who is interested in the ascertainment of the market value of the holding" be inserted after the words "determine the market value of the holding."

Mr. KIRAN SANKAR ROY to move that in clause 23, proposed section 26E, clause (*2*)—

(*ii*) line 12, after the words "market value" the words "or six times the annual rent of the holding sold or the portion or share thereof sold whichever is greater" shall be inserted.

Maulvi KADER BAKSH to move that in clause 23, proposed section 26E (*2*)—

(*ii*) in lines 11 and 12, for the words "at twenty-five per cent. of such market value," the words "six times the rental of the land" be substituted.

Babu ROMES CHANDRA BAGCHI: I formally move that in clause 23, in proposed section 26E (*2*), in lines 11 and 12, for the words "twenty-five per cent. of such market value" the words "twenty per cent. of the market value" shall be substituted.

The Hon'ble Sir PROVASH CHUNDER MITTER: This is consequential to what I have already accepted. So I accept this amendment.

The following amendment was called but not moved:—

Kazi EMDADUL HOQUE to move that in clause 23, in the proposed section 26E (2), line 11, for the word "twenty-five" the words "twelve and a half" shall be substituted.

Maulvi TAMIZUDDIN KHAN: I move that in clause 23, in proposed section 26E (2), line 11, for the words "calculated at twenty-five per cent." the words "calculated at ten per cent." shall be substituted.

Khan Bahadur Maulvi EKRAMUL HUQ: I move that in clause 23, in the proposed section 26E (2), line 11, for the word "twenty-five" the word "five" shall be substituted.

The following amendment was called but not moved:—

Khan Bahadur Maulvi MUHAMMAD ISMAIL to move that in clause 23, in the proposed section 26E (2), lines 11 and 12, for the words "twenty-five per cent. of such market value" the words "six times the annual rent of the holding or a portion or share thereof" shall be substituted.

Maulvi KASIMUDDIN AHAMAD: I formally move that in clause 23, in proposed section 26E (2), in lines 11 and 12, for the words "calculated at twenty-five per cent. of such market value" the words "amounting to six times the annual rent of the holding" shall be substituted.

The motion of Babu Romes Chandra Bagchi was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
A'i, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Dr. Pramathanath.
Banerjee, Babu Premetha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Sejoy Krishna.
Burge, Mr. S. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakrabortty, Babu Jatindra Nath.
Chatterjee, Srijut Sijoy Kumar.
Chaudhuri, Babu Pramendra Narayan.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.

Dutt, Babu Sarai Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jagesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan, Babu Debendra Lal.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Pravash Chunder.
Mcitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F.
Paikat, Mr. Presanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sanker.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Babu Manmatha Nath.
Ray, Dr. Sidhan Chandra.
Ray, Mr. Sijay Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sashse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Huque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

The Ayes being 66 and the Noes 19, the following motion was carried:

"That in clause 23, in proposed section 26E (2), in lines 11 and 12, for the words 'twenty-five per cent. of such market value' the words 'twenty per cent. of such market value' shall be substituted."

Mr. PRESIDENT: Amendments standing in the names of Maulvi Tamizuddin Khan, Khan Bahadur Maulvi Ekramul Huq and Maulvi Kasiruddin Ahamad, therefore fail. I shall now take up Nos. 600, 605, 606 and 608.

The following amendments were called but not moved:—

Rai HARENDRANATH CHAUDHURI to move that in clause 23, proposed section 23E, after sub-section (2), the following shall be added, namely:—

"(2a) If the purchaser in sub-section (1) or the mortgagee in sub-section (2) do not comply with the order of the Court the Court shall not, notwithstanding anything contained in the Civil Procedure Code, confirm the sale, or make the order absolute, as the case may be."

Babu SACHINDRA NARAYAN SANYAL to move that in section 26E (*3*), after the words "and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner," the following shall be added, namely:—

"No sale shall be confirmed or decree or order made absolute unless the landlord's transfer fee be paid by the decree-holder and the receipt for payment of the same filed in court."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I move that in clause 23, to the proposed section 26E (*3*), the following proviso shall be added, namely:—

"Provided that if the purchaser or the mortgagee do not comply with the Court's order under sub-sections (*1*) and (*2*) there will be an order for forfeiture of the amount paid and for re-sale in the case of the purchaser and for dismissal of the suit in the case of the mortgagee."

The reason of my moving this amendment is that under the Civil Procedure Code if any purchaser deposits one-fourth of the purchase-money and the remaining three-fourths within a month, then the Civil Court has to confirm that sale. Here the provision is that 25 per cent. of the purchase-money should be deposited as landlord's fee. But there is no such penalty, as aforesaid, under this section, if he does not comply with the order.

The Hon'ble Sir PROVASH CHUNDER MITTER: We accept the amendment moved by the Maharaja of Mymensingh.

3-45 p.m.

The motion of Maharaja Shashi Kanta Acharjya Chaudhuri, of Muktagacha, Mymensingh was then put and a division taken with the following result:—

AYES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Banerjee, Mr. A. C.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Lala, Babu Sareda Kripa.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.

Rahman, Mr. A. F.
Raikat, Mr. Presanna Deb.
Ray, Babu Surendra Nath.
Reid, Mr. R. N.
Ray, Mr. Bijoy Prasad Singh.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Roy, Babu Nagendra Narayan.
Sarker, Rai Sahib Rabati Mohan.
Sattar, Khan Sahib Abdus.
Solaiman, Maulvi Muhammad.

The Ayes being 36 and the Noes being 20 the motion was carried.

The following amendments were called but not moved:—

Mr. ALTAF ALI to move that in clause 23, from the proposed sub-section (3) of section 26E, lines 4 and 5, the words "the prescribed cost of transmission thereof" be omitted.

Mr. KIRAN SANKAR ROY and Dr. KUMUD SANKAR RAY to move that in clause 23, proposed section 26 E, clause (3), lines 7 to 10, the words "beginning with the words 'and the Collector' and ending with the word 'manner'" shall be omitted.

Mr. ALTAF ALI to move that in clause 23, from the proposed sub-section (3) of section 26E, the following words be omitted, namely, "the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any."

Mr. SYED MD. ATIQULLAH: I formally move the following amendment which stands in my name, and I hope that as it is consequential to the similar one which was carried with reference to section 26D, it will be carried.

"That in clause 23, after proposed section 26E (3), the following provisos shall be added, namely:—

'Provided that in case there is no common agent, a co-sharer landlord after transmission of landlord's fee to the Collector shall be entitled to draw his proportionate share of landlord's fee by an application to the Collector on that behalf, on production of extracts of Collector D. Register or finally published settlement records or any other document showing his share and title.

Provided also that when a sole landlord purchases a holding or a share or a portion thereof no deposit of landlord's fee need be made and no notice need be served. And when a co-sharer landlord purchases a holding or a share or a portion thereof and his share is specified in the instrument of transfer he should be entitled to deposit only the amount of landlord's fee proportionate to the share or shares of the remaining co-sharers.' "

Mr. F. A. SACHSE: Sir, this provision was added to section 26D the other day by the House; but we did not see that it was really necessary to complicate the section by the insertion of this proviso. The first part of it means that the Collector should pay out the landlord's fee separately to the different co-sharers. The Bill, as it now stands, serves the intention of this proviso. According to the provisions of the present law in the case of permanent tenures and raiyati holding on fixed rent, the Collector is supposed to pay the fees to Joint landlords and it will be done if it can possibly be done in the case of the more substantial fees which are expected to be realised for the transfer of occupancy holdings. Then, as regards co-sharer landlords not paying their share of the necessary dues naturally if they do pay they will get them back and it does not seem necessary to provide in the Act for temporary exemptions, which may complicate the procedure unnecessarily.

The motion of Mr. Syed Md. Atiqullah was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Bose, Babu Bejoy Krishna.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjea, Srijut Bijay Kumar.
Chaudhuri, Maulvi Nurul Huq.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maiti, Babu Mahendra Nath.
Meitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.

NOES.

Abbott, Mr. E. G.
Blair, Mr. J. R.
[illegible]
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
[illegible]

Dash, Mr. A. J.
Fyfe, Mr. J. H.
Ghose, Mr. M. C.
Gilchrist, Mr. R. N.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Nagg, Mr. G. P.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Marr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Provash Chunder.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Reid, Mr. R. N.
Roy, Mr. Bijoy Prasad Singh.
Sachse, Mr. F. A.
Sarker, Rai Sahib Rebati Mohan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

The Ayes being 39 and the Noes 29 the motion was carried.

4 p.m.

The following amendments were called but not moved:—

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 23, after sub-section (*3*) of section 26E, the following proviso shall be added, namely:—

"Provided that notwithstanding anything contained in the Code of Civil Procedure, 1908, the sale shall not be confirmed unless the decree-holder deposits in Court the landlord's transfer fee."

Mr. KIRAN SANKAR ROY and Dr. KUMUD SANKAR RAY to move that in clause 23, after the proposed section 26E, the following shall be inserted:—

"26EE. After receipt of the landlord's fee the prescribed cost of transmission thereof and the notice of the transfer under sections 26C and 26E, the Collector shall cause the notice to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner, and

(*1*) if the landlord or his common agent, if any, raises any objection within a prescribed period that the consideration money or the annual rent of the holding or the portion or share transferred as set forth in the instrument of transfer, decree or certificate is not correct, shall issue notice thereof to the transferor as well as the transferee in the prescribed manner and upon hearing them summarily the Collector may issue certificate recoverable under the Bengal Public Demands Recovery Act, 1913, for any additional sum that may be found due to the landlord as the landlord's fee and such certificate should be final;

(*2*) if no objection is raised within the prescribed period the Collector shall cause the landlord's fee to be transmitted to the landlord named in the notice or his common agent, if any, in the prescribed manner."

Khan Bahadur Maulvi EKRAMUL HUQ: Mr. President, Sir, I beg to move that in clause 23, the proposed section 26F, shall be omitted.

Sir, we have in this Council used hot words, but we find that these have not broken the bones of the officials. We have appealed to their sympathies, to their sense of equity and justice and human feelings, but these appeals have not melted their hearts either. We have advanced arguments in support of the amendments which we tabled for the consideration of the House, but all those arguments have fallen on deaf ears. To-day, Government, the zamindars and the Swarajists are going to enact a measure unprecedented in the history of Bengal—nay, in the history of the whole of India. We are going to give a right to the landlords which they never possessed. A right which no Government ever thinks of giving to any particular individual is being given to the landlords by the British Government. What is that right? It is that the landlord shall be able to turn out bona-fide purchasers from the lands they have purchased. The Hon'ble Member in charge of the Bill has said that this bad legacy was left to him by his predecessor. He has told us that he had no hand in shaping the provisions of the Bill. But, Sir, who on earth—even if he is a son—accepts a bad legacy from his father; who on earth, if he has been left debts by his father and no property and no income, accepts the debts of his father and pays off the debtors from his own pocket? That is exactly what the Government of Bengal is doing. On the plea that this is a bad legacy left to them by their predecessors they themselves are actively supporting this provision and giving to the landlords a right to which they cannot lay any claim with the least semblance of justice. Sir, to my mind it is not a bad legacy. It is the doing of the Hon'ble Member in charge of the Bill: it is also the wish of the other members of Government to see this measure enacted so that the raiyats may be adversely affected and ultimately ruined. Cannot the Government accept the amendments in favour of tenants or frame favourable amendments themselves?

Sir, you have seen that they are making the law more and more stringent as I have just now pointed out, and you have also seen that even a short while ago Government quietly supported the landlords in inserting a provision which is bound to affect adversely the interests of the tenantry and gives more right to the landlord. I refer to amendment No. 606. Sir, is it not a fact that Government by keeping quiet and not voting against the amendment which they were in honour bound to do, and by not supporting those who wanted to see that such a provision should not be inserted, enabled the friends of the landlord to insert a provision which will prove to be a great hardship to the tenantry in the land. You have enabled the landlords in case a purchaser does not deposit the landlord's fee after purchasing the land in a sale,

under the law the sale automatically becomes void; not only the sale does not become void, and if the suit is a mortgage suit, the suit will stand dismissed. What does it indicate? It indicates that Government is out to help the landlords against the masses in the country. Government wants to see that the masses should not thrive: on the other hand, it wants that the few should thrive at the expense of the masses. Sir, this is the attitude of Government, and we are extremely sorry that a Government, which always pleads solemnly that it is anxious to protect the interests of the masses, that it is the trustee of the masses, should be a party to the enactment of such a piece of legislation.

Sir, what will be the effect if you pass this provision for pre-emption? What will be the effect if you enable the landlord to purchase all the lands which are sold by a particular tenant? The result will be that you will reduce the tenants to the position of serfs. You may inquire: "How?" "How will these persons become serfs?" Is it not a fact—and do you not know this—that even now when there is a sale of lands many landlords purchase them in the name of their sons, daughters, nephews, sons-in-law, and karmacharis and other servants? And what is the effect of such purchases? The effect is that these lands pass out of the hands of the agriculturists and vest in those who have nothing to do with agriculture, and these persons in their turn compel the agriculturists to come to them and make them agree to the payment of bhag, which is not rent but which is many times the rent which is actually paid by an outgoing tenant, with the result that a tenant, who has been paying only eight annas or a rupee, has to pay as much as ten, twelve, or fifteen rupees. Generally speaking, the tenants do not possess much land: it is only a few bighas of which they are master, and when even this is taken away from them gradually which is bound to happen you will certainly make these tenants serfs. You cannot expect that in spite of their labour from morning till night they will be able to get even two meals a day for themselves and their family as they will get only a small quantity as bhag. Is it not a fact that you are giving a chance to the mahajans to come in at all times by enabling the landlord to make holding khas? How? You know very well that there is enough money in the hands of the mahajans and many of these are speculators. You know that there are many mahajans who would like to lend their money even at 4 or 5 per cent. interest. Will not these mahajans go to the landlord and say that if the landlord could not buy the lands himself, they were prepared to take over the lands from the tenants and give to the landlord not only the extra 10 per cent. but also another 5 or 10 per cent. When a tenant purchases a piece of land for Rs. 100, the mahajan purchases it through the zamindar for Rs. 120. Now, the tenant who first purchased the land cannot live without having some land and he is bound to come to this mahajan and say: "We cannot live upon

air and water. We must live on something, and this benign British Government has not provided for us sufficient industries for enabling us to earn our living from these industries. We cannot give up our land. It is absolutely necessary for us to take this land and feed our children." This being the case, can you not imagine that the mahajan will thus be given a handle to strike a good bargain with the tenant. And if the land were let out on bhag formerly, the amount of bhag being $\frac{1}{5}$ or $\frac{1}{4}$ or $\frac{1}{3}$ of the produce, the mahajans will say: "Nothing less than $\frac{1}{2}$ or $\frac{2}{3}$ will satisfy us." A man who has absolutely nothing to fall back upon will certainly be compelled to agree to any terms the mahajan might dictate. Is it not a fact that during the famine days persons who used to be paid one rupee for their labour were quite content to work for 3 annas from morning till night? And why? Because if they did not get work they would starve: if they did not work their family, including little children, would starve. In order to avoid this eventuality, they had to work even for two or three annas a day—from morning till night. Cannot you now picture to yourselves the position of the tenants? Cannot you picture to yourselves that the tenants are bound to go to the landlords or the mahajans and beg them not to deprive them of the only means of getting their livelihood: they will beg the landlords to give them the land, no matter whatever be the price asked for it. Are you ready to do this? Is it not a fact that if this provision is inserted, the very agriculturist who was quite able to get enough living for himself and his family would be reduced to utmost poverty, that he will not be able to feed himself and his family? This is the picture which you ought to depict to yourself, if you have not already forfeited the right of being called a man. Picture these things to yourselves, and then think very carefully whether you should allow the right of pre-emption to the zamindars or not. I think that if you are actually human beings you will not think for a moment of giving this handle to the zamindars for oppressing the tenantry: you will not think of placing the tenants in such a sorry plight: and you will certainly think that whatever else may remain on the statute book, this provision at least ought not to be there.

Sir, the friends of the zamindars might say: "Is it not possible that the purchasers will always pay a high price for the lands and give a lower figure in the deeds?" Yes, that is quite possible. But, is it not also a fact that the present law, as it stands, has given the right to the landlords to sue the tenants in a court of law and to have adjudication there as to what price is fair and reasonable? And it is on this price that the premium should be charged. You may say that you are out to stop litigation. But at what price pray? You are out to stop litigation at the price of human lives. Be sure of it that if you were to leave the old law as it is, there might be a few cases of litigation here and there, but surely there will not be so much misery as

this provision will bring about. Just think for a moment whether you are out to bring misery in the land or to bring happiness and peace instead.

4-15 p.m.

If you actually, as I have told you on several occasions, are ready to make these agriculturists labourers and slaves you are quite at liberty to enact this measure. But remember the blood of those agriculturists will be on the head of the Hon'ble Member of Government and on the head of so many persons who side with him. Are you ready to have the blood of those numerous agriculturists on your head? Are you to be handed down to posterity as so many blood-thirsty creatures? I shall in the name of humanity appeal to you all who have got family and children, whether you are Indians or Europeans, whether zamindar, or Swarajists, to see whether you should have such an enactment in the statute book. I appeal not only to you and in case you do not hear the voice of your conscience, I shall appeal to the rulers of the land who have given pledges of honour to the agriculturists that they would look after the masses who, both in India and England have told the outside world that they would protect and foster the dumb-millions—the mass—and secure them their rights. Redeem your pledges or be disgraced for ever.

Mr. BIJOY PRASAD SINGH ROY: I have listened most carefully at least to one of the redoubtable champions of the tenants party in the House and the only impression his speech has made on my mind is: that my friend like many of his supporters are groping in an atmosphere of hopeless unreality and of unreasonableness. Khan Bahadur Maulvi Ekramul Huq has said that the zamindars have got no semblance of right to pre-emption which the Government are anxious to confer on them. Sir, this is news to me—as it must be to everyone else in this House. The zamindars have been declared by Acts of Parliament as proprietors of the soil. They were declared proprietors of the land by the British Nation who gave a solemn pledge to the ancestors of the present zamindars. Since the Act of 1885 there have been encroachments on their rights but the encroachment was never so serious as by this Bill. In fact anyone who has carefully analysed the present Bill will unhesitatingly admit that it is almost an annulment of the Permanent Settlement. A landlord has always the right to choose his tenant; this is the law not only in Bengal but this is the law in England and everywhere else. The zamindars of Bengal are about to be deprived of that primary right of a landlord and my friend Khan Bahadur Ekramul Huq still says that the zamindars are going to be given a new right without any semblance of justice. Sir, I know that the Government of to-day are in no way fit successor of the Government

which established and consolidated the British rule in India. The Government now are very weak and they are anxious to submit to the most assertive and clamorous people without any sense of justice. Sir, we have been told that zamindars enjoy unearned income by such a high authority as Babu Jitendralal Bannerjee whom I do not find here to-day. But facts will prove otherwise. Under the Permanent Settlement the revenue was fixed very high and the zamindars of Bengal had to suffer much. The revenue was fixed as high as 90 per cent. I may point out that it was calculated at Rs. 2,68,000 and this was as high as it was possible to get at the time. It was three times the collection of Maharaja Nando Kumar in the last year of the Nawab's rule (1764-65) being Rs. 81,75,000 and odd and double the collection in the first year of the Campany's Dewani (1765-66) being Rs. 1,47,00,000 and odd. So the revenue was raised within a generation by 200 per cent. and what was the result? Many zamindaries were sold. I can quote a very distinguished authority, namely, Sir George Campbell. In the Administration Report of Bengal of the year 1872-1873, he says:—

"There was widespread default in the payment of Government dues and extensive consequent sales of estates or parts of estates for recovery of arrears under the unbending system introduced in 1793. In 1796-97 lands bearing a total revenue of sikka rupees 14,18,757 were sold for arrears of revenue and in 1797-98 the revenue land so sold amounted to sikka rupees 22,74,076. By the end of the year the greater portions of the estates of Nadia, Rajshahi and Dinajpore Rajas had been alienated. The Burdwan Estate was seriously crippled, and the Birbhum zamindary was completely ruined. A host of zamindars shared the same fate. In fact it is scarcely too much to say that within the ten years that immediately followed the Permanent Settlement a complete revaluation took place in the constitution and ownership of the estate which formed subject of the settlement."

So that the zamindars whose ancestors invested their money had to pay dearly for the permanent settlement and they had to spend very heavy amounts in reclaiming waste lands which were granted to them. Babu Jitendralal Bannerjee said that the Permanent Settlement was a mistake and that it was not a necessity. I shall quote from a book which will show what were the state of affairs before the Permanent Settlement and after the Permanent Settlement. Sir, I shall read from a report by Mr. Pattle, Member of the Board of Revenue:—

"The country brought under the Decennial settlement was for the most part wholly uncultivated. Indeed such was the state of the country from the prevalance of jungles infested by wild beasts that to go with tolerable degree of safety from Calcutta to any of the adjacent districts a traveller was obliged to have at each stage four drums and as many torches. At this conjuncture public credit was at the lowest

ebb and the Government was threatened with hostilities from various powerful Native States. Lord Cornwallis's greed and comprehensive mind saw that the only resource within his reach in this critical emergency was to establish public credit and redeem the extensive jungles of the country. This important object he perceived could only be effected by giving to the country a perpetual land assessment made on the gross rental with reference to existing productiveness and therefore promising to all those he would engage the encroachment of an immense profit from extending cultivation. Admitting the sacrifice was very great I think it cannot be regretted when it is considered what difficulties it conquered and what prosperity it has introduced. For my part I am convinced that our continuance in the country depended on the adoption of that measure and that our stability could not otherwise have been maintained."

Khan Bahadur MUHAMMAD ABDUL MUMIN: On a point of order, Sir. Is the member in order in describing the condition of Bengal before the Permanent Settlement?

Mr. PRESIDENT: It is not exactly relevant but I think we are discussing a very broad question and at least some speeches should be allowed to cover wider grounds than what the amendment permits.

Khan Bahadur Maulvi AZIZUL HAQUE: Is the hon'ble member entitled to say that this country is still infested with wild beasts?

Mr. BIJOY PRASAD SINGH ROY: I do not for a moment contend that the country is still infested with wild beasts but the prosperity is due to the exertions of the much maligned zamindars.

I would remind the Government of the sacrifice the zamindars were called upon to make and it would not be fair to them if the zamindars are deprived of their rights without any compensation or safeguard. It is proposed to deprive the zamindars of right of proprietorship and in lieu of that to give them the most shadowy, the most questionable remedy of the right of pre-emption. They will be able to purchase their own land by paying about 35 or 40 per cent. more than the market value and not 10 per cent. as stated in the Bill, because they will have to return the 20 per cent. salami and pay the costs of transmission, etc. plus 10 per cent. Why the purchaser would pay 40 per cent. when lands are available for 20 per cent. Sir, high salami and low rent always go together; there is not the least chance of a zamindar realizing even the 20 per cent. extra which he will be called upon to pay to exercise the right of pre-emption, by settling the land with a new tenant; higher rent is almost unthinkable in such a case. Sir, it is a well known fact that zamindars always prefer the actual tiller of the soil as tenant to

the middleman who seldom pays his rent without litigation and is always reluctant to acknowledge anyone as his landlord. Pre-emption will not affect the tiller, it will not be injurious to the interest of the agriculturists but it may affect the middleman or the mufassal lawyers whom my friends Khan Bahadur Azizul Haque and Khan Bahadur Ekramul Huq represent. The zamindars will seldom exercise the right of pre-emption and it is very unfair to contend that it will be an engine of oppression in their hands. The zamindars are anxious to maintain peace and good relations between themselves and the tenants which still exists in spite of the so-called friends of the tillers like Babu Jitendralal Bannerjee. If pre-emption becomes an engine of oppression at all, it will be not in the hands of zamindars but of the money lenders who do not scruple to deprive the poor tenants of their little all in this world. The zamindars are going to be deprived of a very important right in land subject to the right of pre-emption; I hope the Government will have courage to stand the provisions of the Bill and that they will not submit to the threat of my friends on the other side.

Babu AKHIL CHANDRA DATTA: I rise to oppose this motion and that I do so not with a light heart. I know there is an acute difference of opinion on this question. I know there is an enlightened body of opinion on both sides of the question. I have gone through the opinions collected by Khan Bahadur Maulvi Azizul Haque very carefully.

4-30 p.m.

In fact it is a matter upon which one cannot vote rightly without bestowing his best care over it. I can assure all my friends that I have bestowed the most anxious consideration to this question for a great length of time because I am alive to the responsibility of voting upon a momentous as well as controversial question like this. I may as well say that I was at first not favourably disposed towards this rule of pre-emption but after prolonged deliberation and discussion I have come to the conclusion that this rule will be beneficial to all the parties concerned. Now, Sir, in discussing a matter like this I make an appeal to all the members of this House to discuss it most dispassionately and without heat and prejudice. Acrimonious speeches we have had enough; let us not have them at least so far as this amendment is concerned.

Now, Sir, the question is why is this rule wanted? As has been admitted on all hands, not infrequently an under-valuation in the sale of occupancy holdings takes place; under-valuation is deliberately resorted to for the purpose of reducing the salami. Sir, as long as human nature will remain human, and unless a man is something

extraordinary, he will be subject to human frailties and this is the most natural and inevitable, and under-valuation will continue. But when I say that there is under-valuation, I do not want to say anything against the transferrer or the transferee. What is the position now? The House has decided that the occupancy rights should be transferable and it has also decided that some salami should be given to the landlords, that whether the raiyats give them salaam or not, they are to give them salami. That is a decision which may be right or which may be wrong. According to some it is wrong and according to others it is right, but the decision is there and the decision is that the landlords should get some salami. Fortunately or unfortunately it is an accomplished fact and it is our duty to see that the landlords can legitimately demand that this provision be not made illusory, so that they may not say that they are cheated of the salami which the House has allowed them. That was a question which had to be discussed by the Kerr Committee and we all know that of two possible alternatives which were suggested one was that the landlords may be given the right of bringing a suit for the determination of the consideration money and the other was the right of pre-emption, and after considering all the advantages and disadvantages the Kerr Committee decided that the pre-emption was the better course. Both these alternative methods are bound to lead more or less to litigation; litigation cannot be avoided in any case. In both cases the right is likely to be abused; in some cases, if not by the landlords themselves by the naibs and agents of big landlords. But the pity is that it is something which cannot be avoided in either case, and we must make our choice between these who alternative methods.

My friend has contended that this law of pre-emption is a monstrous innovation for the benefit of the landlords and would inflict a cruel wrong upon the raiyats. But let us examine this question from the point of view of its being an innovation and if an innovation, whether it is an innovation which benefits the landlords. One principle which has been accepted by the members of the different groups of this House is the doctrine of existing rights. Let us now test this rule of pre-emption in the light of that doctrine. What is this rule of pre-emption? It gives certain rights to the landlords in the event of transfer of certain holdings whether in part or in entirety. It is a right given to the landlords to acquire khas possession of the land if the tenants wish to transfer it. The question arises whether it is a new right that is going to be given to the landlords. My submission is that it is not. Under the existing law landlords are entitled to khas possession of a share or whole of the holding if the tenant wants to transfer it, and that without paying a single cowrie! Now, Sir, what is the proposed rule? Under the proposed rule if a landlord wants to obtain khas possession he will have to pay the regular market price for which the land is sold to the transferee

and to pay an addition of ten per cent. to boot! My friend here reminds me that he will also have to pay all the costs of the application and that within two months. Therefore, Sir, it is not a cheap luxury; there is a condition precedent—whether it is right or wrong, I do not mind—which is certainly of a novel character and which was absent in the old law. Under the old law I beg to submit he could obtain khas possession without paying anything. But under the proposed law the condition precedent is that he has to make an application under the rule of pre-emption and he must at once pay down the entire purchase money plus ten per cent. of the purchase-money. I have already submitted that the landlords under the existing rule were entitled to pre-emption, only he had not to pay this ten per cent. for the exercise of this right of his! This rule is now going to be fettered with a condition precedent, namely, the payment of purchase-money plus ten per cent. by way of compensation. Therefore: I do not think it can be correctly said that this is an innovation and much less an innovation for the benefit of the landlords. My contention is that it is neither an innovation nor an innovation for the benefit of landlords.

Let us consider this matter from the standpoint of the transferrer or rather from that of the transferee. What is the position under the existing rule? The position is that if the tenant transferred his holding, he was liable to immediate eviction, with the result that he lost not only the land but the money also. And what will his position be under the proposed rule? He will get back the whole amount of money which he had paid and not only that, he will also get ten per cent. as compensation, so that the position, as far as the tenant is concerned, is rather being bettered.

(At this stage a book fell down from Akhil Babu's table, and Khan Bahadur Maulvi Azizul Haque remarked: Things will tumble down; signs are ominous). Yes, things may tumble down but the future is always so uncertain, and as for the signs being ominous, they may be ominous not for me but for my adversaries. But, Sir, I do not claim to have a monopoly of wisdom. There have been differences of opinion on this subject and I do not say that I am right and that the advocates of the contrary opinion are wrong. I am only giving my humble opinion as I have understood this subject and in that view I do not say anything dogmatically.

Tested by the doctrine of existing rights I have shown that this rule of pre-emption is not a new thing to the landlords and it is not a disability to the tenants.

The next question is whether it is economically a sound doctrine or not. The hon'ble mover has said that there is universal criticism levelled against this rule of pre-emption, that under it the position of the transferee will become insecure and uncertain, and therefore

the natural tendency will be to lower the market value of the raiyati holdings. My submission is that a closer examination of the question will show that it is quite the other way, because I do think that this rule of pre-emption will automatically raise the value of land to the highest level possible under the economic conditions that prevail at the time of the transfer. In this connection we must remember that landlords cannot afford to pay the entire price of the land plus a commission of ten per cent. There have been under-valuations and properties have been known to be sold at an amount less than the land is really worth. Therefore as soon as there is an under-valuation, it is only then that the landlord can come in and say "I shall take the land and pay ten per cent. commission." Let us take into consideration a case in which the highest value has been paid to the transferee, that is a case in which my submission is that according to the irresistible operation of the law of demand and supply it is not possible for the landlord to pay a commission of ten per cent. and take over the holding. It is not a question of jid, it is not a question of luxury, but it is a question of actual profit and loss. It is impossible for a landlord to pay Rs. 1,100 for a piece of land the highest value of which is Rs. 1,000.....

[Here the member having reached the time-limit resumed his seat.]

[At 4-45 p.m. the Council was adjourned and it reassembled at 4-55 p.m.]

Babu AKHIL CHANDRA DATTA: May I have three more minutes, Sir, to finish my speech?

Mr. PRESIDENT: I think when I adjourned the House I announced that your time was up and you then did not ask for extra time; so I am sorry I cannot give you more time.

Babu SACHINDRA NARAYAN SANYAL: Sir, before the present legislation the occupancy raiyats had no right of transferring his holding either in its entirety or in shares.

The right of pre-emption has become a necessity on account of practical difficulties created by the right of transferability of occupancy holding or portion or share thereof having been conferred on the raiyats. It may often happen that the incoming tenants may be persons who are not regular in payments of rents and on that reason they may be considered undesirable tenants.

There may be cases where the land of a holding consist of fertile plots and non-productive plots in one and the same holding. If a tenant sells off fertile plots with a view to get the highest price the

remaining portion would not be sufficiently capable of giving an yield of crops of which the tenants would be able to meet the rent and this would entail a great hardship on the landlord.

As regards the right of pre-emption there cannot be any valid objection on behalf of the tenant for he will get his money from the transferee and it will not concern him whether the landlord pre-empts or not. Sir, lastly, I beg to draw the attention of my Muhammadan friends in this House to the fact that the right of pre-emption is a right which is recognised by the Muhammadan law and my friends have been enjoying this right from time immemorial. Pre-emption in village communities in India had its origin in the Muhammadan law and was apparently unknown in India before the time of Mogul rulers. I hope that there should not be the least opposition from any section of the House and I am sure that not a single Muhammadan member will oppose this right of pre-emption inasmuch as it is enjoined by the Islamic law.

Babu NALINIRANJAN SARKER: Of all the points of dispute, arising out of the present Bill, the right of repurchase given to the landlords is obviously a most controversial one. In the consideration of this point there has been so much confusion of ideas that serious misapprehensions have arisen, and we need not be surprised if, at the present moment when we are faced with the immediate task of settling its final shape, passion should be running too high to admit of cool consideration. As the matter is a most serious one, it is all the more necessary that it must engage equally the most serious and careful consideration of the members of this House.

At first sight, the right of repurchase may seem to the raiyat or rather his champion to be an abominable encroachment on the tenant's right of transfer which has been definitely conceded. The landlord also, from his particular point of view, may equally insist not only on the retention of this clause but also on an extension of his right, by modifying the clause, on account of what he considers to be the most revolutionary changes made in favour of the tenants by reducing his absolute power in the matter of transfer of holding. If each should thus insist on viewing the problem exclusively from his own point of view, obviously no settlement can be arrived at except by the terrible process of a fight to the finish. Since it is clearly impossible that each party can get everything it wants, is it so absolutely beyond the range of our efforts to find a common basis of agreement? Compromise is the only, and I may say the best, way out, for in a sense it is an acceptance of little of what you fear to be wrong in order to get more of what you know to be right. And the provision in the Bill has been made on the basis of a compromise.

In order to get the right view of the situation, I would ask my friends on the right, first to consider what gains they have so far secured in getting a practically unrestricted right of transfer for the tenants. And, in that case they will realise that the retention of this provision though provides for some restriction it is not such an obstacle as to materially injure the interests of the tenants. If we constantly harp on what has been conceded to the opponents, instead of finding satisfaction in what we ourselves have gained, then not only will any settlement be impossible in the present but a fruitful source of trouble will subsist for the future. I would request both parties to approach the question in this spirit.

It would be seen that the right of repurchase, which it is proposed should be given to the landlords, is more or less in the nature of necessary complement to the free right of transfer with which the tenants have now been invested.

The object of the introduction of this provision is mainly two-fold. It is devised to protect the interest of the landlord against an under-valuation of the price of the holding, in the instrument of transfer, on the basis of which price the landlord is to get transfer fees and also to give him the right of selection of tenants, in however limited a form it may be, or in other words, in order that an undesirable tenant is not forced on him. Regarding the first question, when it has been provided that the landlord will have to accept the amounts mentioned in the instrument of transfer as a basis of transfer fee without any question whatsoever, it is only fair and right that he should be afforded some safeguard against any under-valuation, collusive or otherwise. For such safeguard the only other alternative is that the value should be settled by a court of law, and the resulting litigation would undoubtedly be a source of more serious trouble and loss to the tenants than the method contemplated in the Bill. Under the existing law, a landlord having the full power to recognise or refuse to recognise such transfer or transferees no question of under-valuation would arise, because he can simply withhold his consent unless and until the amount of transfer fees is acceptable to him. But under the proposed scheme he is compelled to accept the prescribed percentage of an amount mentioned in the deed, over the fixing of which he has no control. He must, therefore, be afforded some means to guard against accidental or deliberate under-valuation.

As to the next safeguard, similarly under the existing law there was no apprehension of an undesirable tenant coming in, because of the power of withholding consent to transfer. It is said that the fear of the undesirable tenant is largely imaginary, or at best sentimental as the landlord's sole criterion has been and will be the willingness of the incoming tenant to pay adequate transfer fees. The absence of any large number of eviction of unrecognised transferees is urged

in favour of this contention. It is evidently forgotten that when the landlord's right of recognition was absolute, the very knowledge of his personal likes and dislikes or his necessities were sufficient to keep the undesirables away from his land. There would be no occasion for such evictions, the absolute power having worked towards an automatic selection. Sir, take the case of a piece of land closely contiguous to the residence of the landlord himself—there can be no doubt he would not acquiesce in its transfer to any one who is not wholly approved by him. In such a case it is inconceivable that any intending purchaser would push himself forward to the extreme point of being forcibly evicted.

Let me proceed to substantiate my point that it is a matter of mere sentiment nor does it involve any undeserved aspiration on others. It involves no question of inferiority between one class of people and another. Even in the most democratic country one is entitled to have his own personal tastes and preferences. If without encroaching upon any public right one could keep his environment and surroundings to his own liking there can be no objection to it. Especially what the tenant is insisting on is the right to convert his tenancy right into their proper money value, they cannot in the same breath seek to force on the landlord such tenants who are not acceptable or may even prove inimical to him. The raison d'être of this provision is to protect the compactness of village communities and to respect local feelings as regards exclusiveness as also to preserve the seclusion of private family life and so forth and not to interfere unnecessarily with the right of distribution of such properties. In fact this is and has been the condition of society in your country. We should remember our peculiar social condition in rural areas and we should recognise that every village and every estate should be safeguarded against the entry of intruders. I would like to make it clear that when a person is not acceptable it does not necessarily mean any reflection on him. However estimable a man may be, he may not be acceptable in every locality as a suitable neighbour. The reasonableness of the objection against accepting an undesirable person in the neighbourhood of the landlord's house was admitted by even the strongest supporters of the tenants' cause, namely, Rai Saheb Panchanon Burma, Mr. Syed Erfan Ali, Mr. Biswambhar Das and above all by Mr. Fazl-ul Huq in the Select Committee of 1923. After all is said and done we cannot turn our backs entirely upon past history. Though to-day we may have decided apparently to deprive the landlord of some of his proprietary rights we cannot forget that originally the tenants were put in their position only by these very landlords and when the tenants were enabled to sell their lands without any restriction, then why should not the landlord also retain some vestige of his ancient rights and that having only those which will neither

diminish the tenant's selling value nor seriously restrict his market? Having considered the necessity and equity of this provision from the point of view of the landlords let me proceed to examine it from the stand-point of the raiyat, the seller and the purchaser.

Let us now examine the question as to how far this encumbrance will affect the value of a tenant's holding. Even under the present uncertain and precarious condition, when on account of the landlord's refusal to recognise the purchase, the purchaser runs the risk of losing his whole consideration money—not to speak of other attendant losses in the shape of expenses of litigation, mesne profit, etc., the land had practically a free market and values have risen steadily during these years; but when this provision will become the law there is no risk in regard to losing the purchaser's money but even the tenant purchaser will get the full amount of his cost back with a ten per cent. increase, practically an unearned income of 10 per cent. for a short period of 2 months; and I am sure this unearned increment will not be resisted by my friends on the right, in the case of the tenants.

Sir, I am convinced that after this Bill is passed, with the certainty which it gives to the purchaser, the value of the land is sure to rise, and so far as the selling raiyat is concerned, this provision of re-purchase will give a definite impetus towards his getting the highest price.

Let me, Sir, make my point clear. It is an economic platitude that the existence of a third party as buyer at a higher rate, tends to raise the value of the commodity. To avoid the exercise of the right of purchase by the landlord, the purchaser will naturally try to buy the land at the highest possible price. It is obvious that the landlord is not likely to elect to exercise his right, to acquire the land, at a price 10 per cent. in excess of the price mentioned unless and until he is assured of getting back more than what he pays to exercise that right. To explain with a concrete example, a land selling for Rs. 100 would fetch him in the first instance, a fee of Rs. 20. The moment he exercises his right he must be fully sure of getting on sub-letting the land again not less than Rs. 30 at least which means that the settlement value of the land must be more than Rs. 150. In this calculation I have not taken into consideration the costs, interests, etc. If these were taken into account the re-settlement value would not be profitable to the landlord if it was below Rs. 175, or in other words, this right will not be exercised unless the value is understated by 45 to 50 per cent. This right, therefore, would be a factor for making the steady rise of values up to its true economic limit. The result will be that even in cases where the seller is too needy and therefore too anxious to be able to force the proper value, the purchaser will not dare to close a bargain at a low figure because

he will have to reckon with the landlord's right of pre-emption. This will further discourage wily people from cheating the raiyat by taking advantage of his helpless position. Therefore, from the selling raiyat's point of view, there cannot only be any grievance but it will prove beneficial.

So far as the purchaser is concerned I have already shewn that he does not stand to lose even in the extreme cases where the right of pre-emption will be exercised by the landlord. The procedure for exercising that right has been made so stringent for the landlord that I feel almost sure that except in extreme urgency it will not be exercised at all, far less to be abused frequently.

Let me now meet the next argument against it, namely, that the uncertainty for two months will affect the value prejudicially. But I think the uncertainty for this short period is not likely to affect the value, when we remember that under the existing conditions there is no limit either to the period of uncertainty or to the risk the purchaser has to run. The assurance of a definite settlement at the end of two months instead of the present uncertainty or in the alternative settlement by the law court, is a distinct improvement.

There is a further objection that the right of re-purchases will be utilised as a possible instrument of oppression, or as the "Statesman" has put it, "—as a means of fleecing and terrorising the tenant."

But if we carefully consider its practical operation there can be reasonable apprehension for this. Those who are in favour of this argument seem to think that the large body of tenants are waiting at the registrar's office for as early a sale of their holdings as possible and that all those who are classed as zamindars are equally ready with the deposit money in courts to exercise their right of re-purchase. Sir, 95 per cent. of our so-called zamindars are leading too precarious a life to take advantage of this right. As a matter of fact, it will be extremely difficult for a large number of them to take advantage of this right even in urgent and absolutely necessary cases. The pitiable economic condition of these landlords has been testified to by persons like Messrs. Sachse and Mumin who have been acknowledged by the so-called champions of the tenants, as the irrefutable authority in the tenant's questions.

I would only ask the House to reflect whether in these conditions a considerable number of the landlords would be able to exercise their right within such a short period of two months even in protection of their own legitimate interests not to speak of the wilful oppression of others. It may be said that a landlord could abuse this right being financed by money-lenders. But I would ask the House to consider the feasibility of such abuse, when it will be seen that the entire

amount of sale price, costs and 10 per cent. increase will have to be deposited in the name of the zamindar and so kept for a period of two to three months. For which money-lender will be so credulous to trust the gomostha or naib or the zamindar himself with such money and under such conditions? If the money-lender is really willing to buy a particular plot he will rather negotiate direct with the tenant than wait and purchase it at such a high price and under such a grave risk. From a consideration of all the attendant circumstances, I am convinced that under the present circumstances, nothing can be fairer as an adjustment between the relation of zamindars and raiyats than the scheme adumbrated in the Bill.

Let me repeat once more what I have so often said that it is not the desire of our party to take advantage of a favourable moment to oppress the wealthy for the sake of flattering the poor any more than to descend to the depth of oppressing the poor for the sake of gaining the favours of the rich and I beseech the friends of either side to pause before they do anything which will disturb the smooth relationship of the present and perpetuate the differences in the years to come.

5-15 p.m.

Maulvi KASIRUDDIN AHAMAD: Sir, of all the amendments that have been tabled for this session the one of pre-emption stands pre-eminent. The proposed section of pre-emption gives the zamindars or the landlords the right of purchase of the holding or a portion of the holding that the tenant chooses to sell—a measure hitherto unknown in the land of the living. It is a dangerous weapon that is going to be placed in the hands of the rapacious zamindars by our benign Government. Thanks to the intelligence of the framers of the proposed Tenancy Amendment Bill of 1928 and thanks to the allies of the zamindars—the so-called popular party—the Swarajists who I am afraid will be denounced by posterity for everything that is detrimental to the peace and prosperity of the country. Sir, if this amendement is carried to-day the consequence which will follow in its train is not difficult to foresee. It will sweep away the agricultural classes and reduce the poor tenants to the status of a day labourer or serfs. It will arrest the progress of the masses. It will make them discontented and drive them to be desperate. This spacious amending Bill, which may be fitly called the Landlord's Bill, gives the landlord right and interest in the land not contemplated even by the existing Act. The Government in the proposed Bill provides milk and honey for the zamindars and stone for the tenants. This is the Bill, Sir, for the delay in the introduction of which in the council this House passed a vote of censure in its Budget sittings against the then Hon'ble Member in charge. Sir, we all deeply regret that the then Hon'ble Member in charge of the Bill is no more in this Council Chamber to-day. Had he been alive his heart would surely have melted at the anguish and

sufferings that are threatening the tenantry of Bengal for the last few days. Sir, there is yet time to undo the mischief and the incalculable wrong that are going to be perpetrated to destroy the tenantry of Bengal. I appeal to the Treasury Bench and the European members of this House to consider the question of pre-emption calmly and dispassionately before they record their verdict. In the name of humanity and in the name of whatever there is great or good I appeal also to the zamindars not to press for the right of pre-emption. It will not do them good in the long run. The picture which they may conjure in their imagination will soon be rudely dispersed. This measure if passed into law will bring about revolution among the tenants and will pave the way of Bolshevism in the near future. The tenantry of Bengal on whom rests the security of an ease-loving existence of the leisurely classes of the country have the right to demand at least the minimum of consideration from those who profess to be the champions of the cause of progress of the masses of our country. And I, as one who have for a considerable span of time been brought into touch with the daily needs and workings of the household of the tenant classes cannot for one moment allow my conscience to be persuaded to believe that this measure can in any way imaginable be conducive to the betterment of the conditions of the lives of those on whom as I have said before depends the affluence of the zamindar class. This measure if passed into law will bring nothing less than a catastrophe, for the peace and good-will that exists now between the landlord and the tenants will be gone for ever and the spirit of strife and discontentment that will be brewing in the hearts of the aggrieved will lead the country to state of perpetual chaos. Also the peace which is essential for the growth of good citizenship will be lost altogether in our province. Ultimately the majority of people who would have in course of time served the country and reaped the benefit of an honest and decent living will be deprived of any impetus to prove themselves men in the truest sense of the word. It will not be an exaggeration if I mention here that living continually under a sword of Damocles the younger generation of this country, who come mainly from the tenant classes, will no longer be able to attain the full stature of manhood and the morbid mentality that they will cultivate as a natural sequence of this measure will breed such discontentment that an explosion once given the spark will no longer be under the control of any Government. Sir, if we consider this question with coolness and equanimity we cannot fail to note that truly speaking this is a challenge thrown by the rich against the poor and it is only humane that the strong should protect the weak. The whole gist of good Government is to preserve the peace and security of those whom Providence has placed under adverse condition in this world. Supposing that the zamindars unite and organise powerfully to legislate for their own benefit at the cost of the poor it is our duty to resist by

reason and persuasion the onslaught of those who can wield power to the detriment of others. With these few words, Sir, I strongly oppose the proposed section of pre-emption and support the amendment for the omission of the same.

Maulvi TAMIZUDDIN KHAN: May I rise on a point of order, Sir? The point is whether those members who had given notice of this amendment will be allowed to speak.

Mr. PRESIDENT: They can speak, but I will not call upon them to do so. They have to catch my eye.

Maulvi TAMIZUDDIN KHAN: I have been trying to catch your eye, Sir, for some time.

Mr. PRESIDENT: But there are others who are equally anxious to catch my eye. (Laughter.)

Babu SURENDRA NATH RAY: Sir, I rise to oppose this amendment. The principal ground for giving the right of pre-emption to the zamindar is that the raiyat on whose behalf there is so much clamour made will in no way be loser if the provision inserted in the Bill be passed. It will guard against fraud and benami transactions whereas the zamindars will not be forced to accept undesirable tenants and good feeling which ought to subsist between the zamindar and his tenant will not be disturbed.

The landlord in justice and equity should have this right of pre-emption. The land is his. He is liable to Government for revenue. He should have facilities not only for the realisation of rent but it should be in his power to prevent the intrusion of undesirable tenants. There must be some safeguard that the tenant does not steal a march upon him. If the landlord be not given the right his task of collecting rent will be attended with difficulties. If the tenants understate the amount of consideration for the transfer of their holdings, the landlord would not get the proper salami. If the purchaser knows that the landlord has the right of pre-emption on payment of the consideration stated in the deed of transfer together with amount of compensation, then he will never attempt to evade payment of the proper salami by understating the value of the holding.

It will impose no disability on the vendors and vendees of holdings. It is a very salutory provision intended to safeguard the interest of the landlord and to prevent any possibility of fraud being practised on the landlord without the tenants being in any way losers.

My Muhammadans friends who have mostly taken up the cause of the tenants know how very valuable this right of pre-emption is considered according to Muhammadan law-givers. Why should they consider this salutory provision as a bug-bear and raise all sorts of objections for nothing?

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I have heard with rapt attention the speeches which have been delivered this afternoon in favour of the clause of pre-emption, but nothing has appealed to me more than the words of compromise and settlement from the whip of the Swaraj party, I mean my friend Babu Naliniranjan Sarker. On the eve of the Simon Commission, the words of compromise and settlement from him are significant words which we can take due note of; but I hope that my friend will, in all his dealings in future, remember that in politics it is not obstinacy but compromise that pays. My friend has said that even the people on behalf of the tenants have admitted that there should be no undesirables near the house of the landlord. I admit it. But my friend has forgotten that he is speaking in the year 1928 when all the landlords have left their homes and have come to the metropolis. (Question). There are no undesirables near about the village houses of the landlords which are now full of jungles and wild beasts as stated by my gallant friend on the other side.

5-30 p.m.

Sir, my gallant friend Mr. Bijoy Prasad Singh Roy, who is not present just now, castigated the lawyers in his speech, and especially my friend Khan Bahadur Ekramul Huq and my myself. Sir, if it is not unparliamentary to say so, I might say in reply that lawyers do not dabble in slow horses and fast women.

Mr. PRESIDENT: I take serious exception to your last words and must ask you to withdraw them.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I said that lawyers do not dabble in slow horses and fast women.

Mr. PRESIDENT: No, you must withdraw those remarks.

Khan Bahadur Maulvi AZIZUL HAQUE: I withdraw. But at the same time I think it is my friend who has brought in in this debate something which he should not have done.

Sir, my friend Babu Sachindra Narayan Sanyal has talked about the question of pre-emption under the Muhammadan law. My friend does not know anything of Muhammadan law: he is not a Muhammadan, and has not studied the Muhammadan law. If my friend

will take up any ordinary student's text-book on Muhammadan law, he will find with what rigidity and rigour this law of pre-emption is applicable. There is what is called the demand of jumping. In other words, as soon as a man knows that a bit of land is purchased by another, he has almost to jump up and claim the right of pre-emption. In this case, there is no law of jumping but the law of dancing. In this case the landlord will sit tight for two months and dance and then perchance choose to claim this right. (A VOICE: How can he dance by sitting tight?)

Sir, my friend Mr. Naliniranjan Sarker has said that landlords cannot always afford to pay, purely through the operation of the law of supply and demand, this extra 10 per cent., and that therefore they will not exercise this right of pre-emption. I do not know wherefrom my friend has got his economics. But I can tell him this simple proposition that if a landlord wants to invest his money profitably, he will certainly exercise this right of pre-emption. The landlord will get twenty per cent. out of every transaction, if he does not exercise this right, but he pays hundred and ten rupees for pre-empting or post-empting the land. Thereafter, my friend has forgotten the entire chapter. Suppose that land yielded only one rupee per bigha, the landlord on the next day would rack-rent and demand five rupees per bigha as rent. I put it to my friend whether it not profitable to get five rupees per bigha instead of one rupee per bigha by exercising the right of pre-emption and paying only ten per cent extra.

Sir, I will not go back to the debate—To whom the land belongs? That is a question which might be left by all of us for the time being into oblivion, because that is a matter which will not lead us to any fruitful discussion. But, Sir, I certainly contradict the statement that the soil belongs to the landlord. If it belongs to the landlord, it also belongs to the tenant, and no one can say to-day that it belongs solely to the landlords or to the tenants. The tenants have as much right as the landlords, and anyone who wants to be the absolute proprietor of the soil is either a fool or does not know the history of this controversy. I will not dilate further on this point, but I will reply to my friend who became almost inspiring when he was speaking of the noble, noble sacrifices of the landlords of Bengal. He quoted chapters and verses from scriptures, from administration reports, from select committee reports, forgetting that those very administration reports, etc., contained the most damning things about landlords. Sir, if you would read the administration reports, from 1872 to 1876 you would find that there is hardly any word of praise for the landlords of Bengal. In this connection I might say that it was only in the year 1902 that an influential landlord wanted to pay down a lakh of rupees for certain water-works, and it was refused by Government. Government in those days was noble-minded. But, Sir, coming back to the history of recent times,

without going back to the history of 1872 or to the history of 1902, may I tell my friends that the ingenuity of the landlords does not allow the slightest possible assessment for rent purposes to escape. I am reading from the Survey and Settlement Report for the District of Nadia, where it is reported that a rate is imposed on wild apples and wild reeds, when even cocoanut leaves which are used in making broom sticks and chati plants which grow wild and whose ashes are used by the poorer classes for washing clothes, do not escape the landlord's rate in collection. I think the picture is one which my friend might profitably study in his cooler hours. Sir, I am quoting from Government reports, and if you read them you will find that in the district of Nadia even land for tamarind trees which supply the poor people with something to fall back upon in times of distress and famine are charged at the rate of Rs. 41-4 per bigha. I may tell you, Sir, that even an ordinary ditch, which is only a breeding place of mosquitoes, malaria and other diseases, is charged a rent of Rs. 8-4-11 per bigha. Sir, lands for growing chillies, which is one of the most ordinary necessaries of life, is charged at the rate of Rs. 4-13 per bigha. My friends of East Bengal who appreciate the virtues of chillies perhaps do not know how lands for growing it are assessed in West Bengal. I will not dwell on history any more but will confine myself to the present situation.

Sir, what is it in pre-emption that we object to? My friends have argued on the assumption that it will at least prevent undesirable tenants coming and settling. May I in this connection read out to the House the opinion of the Bar Association of Dinajpur, in which draft I am still seeing the hand of my friend Babu Jogindra Chandra Chakravarti, one of the leading members of the Swaraj party. It is as follows:—

"It is inconsistent with ordinary human rights—a tyranny of the worst description that one individual should exist entirely at the arbitrary wish and pleasure of another. A man may be undesirable to another because he fails to satisfy all unreasonable demands of the latter and the penalty is that he forfeits lands for which he has paid good money. It is a principle which in equity and justice should not be tolerated."

Sir, no language has been more emphatic than this, and if I have grown wiser it is because of the wisdom of my friends who once opposed this right of pre-emption, it is because of the wisdom of my friends who as a result of their mature experience and judgment recorded their views against pre-emption—views which I am taking advantage of to-day. Sir, I am not far from the point when I say that when this question of pre-emption was first mooted in the year 1880, and it was abandoned by the Government of Bengal on detailed inquiries as being not in consonance with the spirit of the times and

as being against the right of the tenants. Sir, you will kindly remember, in those days the question of pre-emption was not tagged with the right of salami, not to speak of the salami of 20 per cent. which we are offering to the landlords of Bengal. This is I think inconsistent with human rights. I am surprised to find that to-day when we are so much anxious to be imbued with the ideas of democracy, we are told that a man is undesirable as a tenant and that a man exists on the mercy of another. Sir, I shall not wait to dwell at length on these things, but I consider that this demand is inconsistent with elementary human rights.

Sir, my friends have argued that on the question of undesirability of transferees, the landlords should be given certain relief. May I in this connection refer you to the opinions of gentlemen about whom there could be no question of partiality either in favour of the landlords or of the tenants? They are the opinions of persons who have got mature experience and who from the practical working of the law have seen that this right should not be given to the landlords. I shall quote one after another these opinions and show to the House that so far as the theory of undesirabiity is concerned, it is a myth. Before I do so, I shall first quote the opinion of the Hon'ble the High Court, whose decisions have been quoted *ad nauseum*. The Hon'ble the High Court says that the right of pre-emption should not be conferred on the zamindars. I am not now going to draw any inference, but I shall come at once to the opinion of my friend Babu Jogindra Chandra Chakravarti, who is now one of the front-benchers of the Swaraj party, and for whose wisdom and judgment I have the highest respect. He said:—

"The proposed power of the immediate landlord to repurchase practically nullifies the advantages sought to be conferred on occupancy raiyats, by making occupancy holdings transferable..... It is difficult to understand how such a transfer can be made ultimately to depend upon the sanction of the landlord. A weapon is placed in the hands of landlord which he can use very successfully for extorting such further sum from the purchaser by way of solatium, as he chooses, by threat of exercising the power to repurchase. Experience shows that no question of a tenant being desirable or undesirable arises so long as the purchaser has the power to meet the demands of the landlord."

I hope my friends will mark the language of what I am going to read just now.

He said: "I am, therefore, strongly of opinion that no power to repurchase, which amounts to a power to evict the transferee, should be given to the landlord, and I, therefore, oppose the provisions laid down in the proposed section 26G."

Sir, I am in a curious position, because at the next moment I find the opinion of my friend Babu Amulya Chandra Datta, who also belong to the Swaraj party. He says that this right of pre-emption is a very powerful engine of oppression and a source of blackmail in the hands of the landlords. Why did he say that? Because in his calmer moments he realises that it is not a question between the landlords and the tenants but between the gomasthas and the tenants. I can quite understand the case of my friend who says that the landlords remain in Calcutta, but I think my friend will admit that his own gomastha is an element which is very difficult to deal with in the civic life of the country. Sir, I shall not go any further than quote the opinion of our distinguished countryman, whose name is a household word throughout Bengal, whose charity has gone beyond the limits of caste, creed, or colour—I mean Maharaja Sir Manindra Chandra Nundy of Cossimbazar—and whose distinguished son is a colleague of ours in this Council. The Maharaja says:—

"The right of pre-emption will have the effect of fostering litigation and placing raiyati holdings in the hand of the rich and powerful landlord alone."

Sir, what is the opinion of the Manager of the Tagore Raj Estate, which is one of the biggest estates in Bengal? He—an English gentleman—says—

"The fact of the landlord exercising the right of pre-emption will enable the transferee to reduce his price to the transferrer below market value on the ground that he may have to fight a pre-emption case."

Sir, the Bengal Mahajan Sabha, which is a distinguished organisation and has a right of representation in the legislatures of the country, says that the right of pre-emption will reduce the market value of the land.

The Jotedars' Association of Rangpur of which one of my friends of the Swaraj party, is a member, says: "The landlords or zamindars should not be allowed in law any right of pre-emption."

The Hon'ble Mr. Moberly, who is a Member of the Bengal Executive Council, said: "I do not think that the right of pre-emption should ordinarily be allowed to the landlord, as it clearly opens a door to abuse.". The Hon'ble Mr. Birley, who was a member of the Bengal Executive Council, said that it would be used in obtaining a salami in excess of 25 per cent. Mr. J. N. Gupta, who is now Member of the Board of Revenue, and whose work and achievements are known throughout the province, said: "The majority of persons, whom I consulted, are of opinion that no such right should be given to a landlord. This will introduce an element of uncertainty which will considerably reduce the value of a tenant's holding and the fixity of landlord's fee will be a myth."

Mr. A. K. Jameson, and not Khan Bahadur Mr. M. A. Mumin, whom my friend has referred to and who was the Director of Land Records, was of the opinion that it would be an engine of oppression. This was also the opinion of Mr. Fawcus, the Settlement Officer of Khulna, Mr. Lindsay, Mr. Blair, Mr. Bartley, Mr. Lodge, Mr. Henderson, Mr. Gladding, Mr. Veitch, Mr. G. S. Dutt, and others. All these gentlemen condemned this right of pre-emption.

5-45 p. m.

Sir, I will only quote the opinion of a sub-judge. He says that the grant of pre-emption on the broad area of rural Bengal will do havoc. It goes against agricultural interest and well being of the province. It will necessarily leave open the door to illegal dues. Sir, I will only take half a minute more and say that opinions such as this—mature and experienced judgment of people who in the past have been some of the greatest administrators and judges—have in no one measure condemned the pre-emption clause. I do not understand why in spite of this the Government have included pre-emption clause in the Bill. So far as tenants are concerned you are going to pass this legislation in the teeth of strong opposition. It will affect them adversely and will be a fruitful source of litigation. We will have in future to go back to the old days when Government have to undertake a series of legislation to protect the tenants. What the other consequences will be I can neither foresee nor can I venture to prophesy.

Mr. F. E. JAMES: Sir, we think it well at this stage to place before the House our views upon this vexed question of pre-emption. I desire to say that we as a party oppose the wholesale right of pre-emption as it is in the Bill. I will not follow my friend, who was just sat down, in the wholesale condemnation of the landlord. I do not think that it will serve any useful purpose to condemn either the landlord or the tenant in this House. Our object is to deal with legislation and its effect upon the prosperity of Bengal and no useful purpose will be served by condemning one side or the other. I therefore appeal to the House and to subsequent speakers to restrain their language.

There are four main reasons why we oppose the principle as laid down in the Bill. First of all we consider that, as it exists, it gives a weapon of immense and unjustifiable power which can be used and misused particularly by the subordinate officials of absentee landlords. It is no argument to say that, that power will not be abused. The power is there to be abused or not. And as long as it is there in its present form it is too dangerous a power for us to support. Secondly, it hedges about, if it does not actually take away, the right of free transferability which the previous clauses in the Bill have

conceded. We acknowledge immediately the concessions which have already been made both by the landlords' section of the House and by the tenure-holders' section of the House. But we consider that this clause as it stands takes away, if not all, at any rate the greater part of the right which they have given. In the third place we consider that this right of free pre-emption opens the way to resettlement either on a higher rent which is bad, or on a bhag rent which is worse. In the fourth place we find—for after all most of us in this group are neither tenants nor landlords, therefore we must respect the opinions of experienced officers—we find that this principle of pre-emption has been condemned utterly, root and branch, by many distinguished officers in the Government service both on judicial and executive side and specially we have taken note of the opinions of some prominent settlement officers. Having said that, having laid down the four chief objections to the Bill as it stands, we desire to recognise at once that the landlord has claims to consider. There is a need which we admit freely for some automatic check over the question of free transfer. It is also reasonable that the landlord should have some say when the question of a change of tenants occurs and should be able to prevent his land from being transferred to a tenant whom he might deem undesirable. We also consider that he has some right of protection against under-valuation. Weighing our reasons against the wholesale right of pre-emption with the recognition of the need for the protection of landlord's interest, we prepared an amendment which we very much hoped this House would have been willing, through you to have at least discussed on the floor. I very much regret that certain prominent parties in the House have objected even to the discussion of this amendment. I regret that very much because it has usually been a convention of this House that when one party, as a party, put forward an amendment on which the Government is prepared to have discussion for other parties to give their consent. I very much regret that the action of these two parties prevented the discussion of the amendment. We feel very strongly about it as it represented not only our views but went some distance towards meeting the objections of both sides of the House. I know it is now too late at this stage to appeal to the Government to reconsider the whole matter. I congratulate them on the position in which they are. I congratulate them upon their new found allies, we who were only recently the very staunch allies of Government now find ourselves in opposition to them. We know that with the help of the Swarajist friends and their landlord friends, Government can carry the Bill as it stands. I wonder whether the Hon'ble Member, if he permitted his own Government officers to vote freely, would be able to carry the Bill. I make bold to state that among those who will come into the lobby with the Hon'ble Member even in Government circles, there are some who will go most unwillingly. I am therefore

all the more sorry that the opportunity they have had of arriving at some measure of compromise satisfactory to all sections of the House has been definitely turned down by two important sections of the House. My one hope is this: that in the coming statutory changes the portfolio which is now in the hands of the Hon'ble Member, as a member of the Executive Council, will be transferred to a more popularly elected cabinet and then those changes which we would like to see now will be made. There are times in politics when time should be taken by the forelock and people should be forewarned of danger. As I said in connection with another matter there is coming a time when there will be a peasants' party in this House and their demand will be far stronger than the demands which we have put forward and which the Muhammadan tenants' representatives have put forward to-day. Is it not therefore wise to realise that these days are coming and to shape your policy accordingly? I ask that question to-day and if it is not answered I am perfectly sure that those of you are in the House on that day will find that the answer will be given with no uncertain voice.

Rai MAHENDRA NATH GUPTA Bahadur: A few words of explanation on behalf of Government may clear the air to some extent and be helpful to our discussion of this knotty question of pre-emption or more correctly post-emption as provided for in the Bill.

The idea of allowing the landlords an option to purchase his raiyat's land in preference to an outsider is not an original idea to-day. It appeared first in the Tenancy Bill which was introduced in 1883, as section 52 to 55 of that Bill. There it was a proposal of true pre-emption, that is an option given to the landlord to purchase the raiyat's land before the raiyat completed his negotiation with a third party. There was no question then of salami or protection against under-statement of value in the sale deed. The ground taken was —to quote from a Despatch of the Government of India, to the Secretary of State of 21st March, 1882—that "the landlord was fully entitled to choose his tenant in all cases of transfer, and the right of pre-emption would sufficiently enable him to guard his own interests in this respect." The Secretary of State accepted this view subject to the condition that the tenant to whom the pre-empting landlord would sub-let should acquire the usual occupancy right of a raiyat. These reasons were repeated in the Statement of Objects and Reasons to that Bill.

The Government of Bengal was at the time not disposed to agree to right being given to the zamindar to veto a transaction arranged by the raiyat, but were prepared to let him purchase in other cases in preference to an outsider, for example, in a court sale.

The Select Committee on the Bill of 1883, however, accepted the view taken by the Government of India and the Secretary of State and adopted the rate of percentage, provided the landlord must not delay more than one month in paying the price agreed upon or fixed by the court. They were keen to keep the period of negotiation and suspense as short as possible. It was obvious that if this were otherwise, purchasers would become shy and the tenants would never get the full market value of his land.

Eventually the main proposal for transferability of occupancy rights was dropped, and consequently these provisions about pre-emption, which were only corollary to that main proposal, became unnecessary and were dropped also.

They have arisen now because the question of transferability has been revived. Sir John Kerr's Committee accepted the view taken by the Government in 1883, and in their Bill made provisions for the option of post-emption by the landlord. This was followed in the Government Bill of 1925, and also by the Select Committee of this House. It has been accordingly adopted in the present Bill also.

Apart from the ground of theory as to the right of a landlord as such in the matter of selection of tenant when there is a change, which as the theory is always disputable, two other grounds weighed with the Government in adopting a rule of post-emption in the present Bill.

Under the present law, though practice varies, but generally stated, when a raiyat sells his holding, the landlord recognises the purchaser on payment of a salami or when he does not recognise him, he treats him as a trespasser and goes to the law court to eject him.

Now, of the two alternative courses open to the landlord, that of salami, which now varies with his whim and pleasure, it has been made definite, and a uniform rate of fee has been fixed. The rule of post-emption provides a substitute for the other alternative, namely, the option of ejectment suit now open to the landlord. As a substitute it is certainly a fairer and more equitable substitute. If there be an ejectment suit, the purchaser loses or at any rate risks to loose not only the land but also the whole of his purchase-money, the cost of litigation and perhaps mesne profits also, not to speak of the suspense and anxiety for years during which the litigation would be pending. Under the Bill, he cannot get the land, but he gets back his money with 10 per cent. compensation in 2 or 3 months' time. This is the first reason.

The second reason which weighed with the Government is that this rule of post-emption will keep down any tendency to put a lower value in the sale deeds than the actual consideration money. With this provision about post-emption, it has been possible to provide further in

the Bill that the percentage of landlord's fee payable would be calculated on the consideration money as set forth in the deed of sale. The amount as set forth in the sale deed would not be questionable in any manner by the landlord. But if this automatic check were taken away, it was felt that some provision would be necessary to provide against understatement of value in the sale deeds. There have even now been certain amendments put forward for this purpose. But that would mean again litigation of a nature which is always likely to be lengthy and expensive, and what is worse, would introduce an amount of uncertainty which will go materially to reduce the market-value of the land to the raiyat. As a weapon of harassment it will be a cheaper weapon to the landlord than pre-emption as provided for in the Bill. In pre-emption he will have to find and pay in the entire consideration money in the first instance. But in a suit for disputing the value set forth in a sale deed, he need pay only a small court fee to start with. It is likely to be of more frequent occurrence than pre-emption.

There is an apprehension that this rule of post-emption will give a handle to some landlords—the smaller ones in the village—to buy up the raiyati lands and then let them out in barga. But it is difficult to see how this right of post-emption would make any difference. Even without it the landlord is free to purchase direct from the raiyat, and in that case he would get off with 10 per cent. less and avoid the trouble, expense and harassment of going through the Civil Court.

Another objection is that this may be used as a convenient weapon to terrorise and fleece the purchaser. This is a serious objection, and if it turns out to be true it should be the duty of Government and this Legislature to step in and take away the right altogether. Government were not unmindful of this objection, and safeguards have been provided in the Bill against such possible abuse. These are, firstly, that the amount set forth as consideration money in the sale deed must be taken as final and must not be open to question in Court; secondly, that the procedure in the Court should be a simple proceeding and not a suit; thirdly, the time of suspense must be as short as possible. It has been put at two months and in no circumstances should it be permitted to exceed three to four months at the most; fourthly, the rules of merger in section 22 should apply. It was with considerable diffidence that the right of post-emption has been extended to co-sharer landlords. But judging from the number of amendments bearing on this concession, which have been put forward, it should be a serious matter for consideration if they are pressed, whether the right should not be restricted to a sole landlord and an entire body of landlords only. On no account should a procedure of post-emption be permitted to drag on as a regular suit. It is a matter of the utmost importance that the period of suspense should be as short as possible. Otherwise not only will all peace-loving purchasers be shut out altogether but even the

speculating purchaser will be shy and the raiyat will never get a free market on anything approaching a proper value for his land; and the landlord's share as transfer fee will also be proportionately less. There is again the risk that actual cultivation of the land will be neglected during this period of suspense—a very serious contingency which should by all means be avoided. The restrictions of time and procedure by which this right of post-emption has been hedged round in the Bill, are therefore all of great importance, and none of them can be relaxed. I hope with this explanation those who have brought amendments on the several points I have just enumerated will refrain from pressing for them.

With these words I oppose the amendments.

Maulvi ABUL KASEM: On a point of order, Sir. Mr. James has made an appeal to Government to consult the various groups of this House and come to a compromise, but no action has been taken.....

Mr. PRESIDENT: That is not a point of order.

Maulvi TAMIZUDDIN KHAN: After Khan Bahadur Maulvi Azizul Haque has treated the House to certain interesting opinions—opinions inconvenient to the Swaraj party, the landlords and the Government benches as well—I should not like to answer all the arguments that have been adduced by those who are supporters of the provision for pre-emption. I would only touch upon a few points that have been raised by Mr. Bijoy Prasad Singh Roy and Babu Akhil Chandra Datta. It has been said that as the proprietary right of the landlord is going to be taken away, should he not be given something in lieu of that? It is too late in the day to deny that the landlord has not the proprietary right to the land. What is the meaning of the proprietary right of the landlord to the land? Has he got all the right and has the tenant, who takes settlement of the land on payment of a heavy salami, got nothing whatsoever? In no circumstances can it be said that all the rights belong to the landlord and none to the tenant. If the raiyat does not choose to transfer his holding, what is the position of the landlord? The landlord can only collect the rent of the holding; and if there is no failure of heirs, the holding will go down from generation to generation and will always remain in the family of the raiyat. Therefore, the most essential right of the landlord is to collect rents, and if anyone says that all the proprietary rights belong to the landlord, it is nothing but an invalid proposition. As I said the other day, this Bill is going to give the landlords very valuable rights. The average income of the landlord cannot be more than Re. 1 per bigha. If he sells his proprietary right in one bigha of land, he cannot get more than Rs. 20: whereas if the raiyat transfers one bigha of land for Rs. 100, the landlord gets Rs. 20, as landlord's fee for the first

transfer, and if during his life time five successive transfers are made, the landlord gets five times the value of his proprietary interest. I therefore see no force in the argument of those members who say that the landlords should be given something against the loss of his proprietary right. Sir, this provision of pre-emption is surely the last straw that will break the camel's back. In the history of legislation in this country there is no instance of a thing so chimeric, so monstrous. In every country in the world labour is asserting itself and its star is on the ascension, but in this land of surprises the halter round the neck of sleeping, innocent and unsuspecting labour is being tightened every day, and the present Bill, particularly this provision for pre-emption in the Bill, is the climax of this nefarious process. This will complete the enslavement of the raiyat. The creators, worshippers and admirers of this odious monster, in singing its praise, will as a matter of course ascribe to it, sterling virtues. Let no one doubt their honesty, because they owe it to themselves and those whose interests they cherish in the heart of their hearts above all their lip professions, to use their all, their intelligence and ingenuity in the defence of their cherished deity.

According to them the highest of all its manifold virtues will be the quality of saving avaricious humanity from the sin of misstating the value of their lands in the instruments of transfer with a view to defraud their landlords. This song of praise was anticipated in time and it was most earnestly urged that the apprehended evil of under-valuation in documents might be more easily and more effectively averted by fixing the landlord's fee on the rent basis. But, unfortunately arguments based on half truths and most petty, narrow and short-sighted considerations had a greater effect on a self-seeking majority than the voice of reason and statesmanship, and a step was deliberately taken to prepare the ground for this hydra-headed bogey. However eloquent you may be in the praise of this veritable poison tree, it will never bear your cherished fruit. It will not, it cannot, check under-valuation. We all know what an honourable man the average zamindar's naib is. In every case he will harass the transferee with threats of the exercise of the right of pre-emption and will extort from him whatever money he can in addition to the landlord's fee which he has already paid. Honest or absentee landlords will never be apprised of this nefarious practice. Those who are not much troubled by considerations of scrupulousness will be quite privy to these extortions, will complacently enjoy a share of the spoils and will feel gratified to have been able to secure the services of naibs of such rare competency. This will be the order of the day and the transferee will not be foolish enough to perceive that he loses more by stating the correct sale prices in the document than by understating the same, and it is only natural to expect that he will do what is dictated

by his self-interest. So, instead of being an effective check upon under-valuation, the provision for pre-emption in its practical effects will be an incentive to under-valuation. Does the landlord yet think that he will lose anything substantial if he gives up his hobby of having the provision enacted into law? At all events he will get his "five times of the annual rent" to which he has agreed as the equivalent of "20 per cent. of the sale price." Even if there is pre-emption, the vigilant self-seeking of his naib will scarcely allow him to get more than 5 times of the annual rent. Without any prospect of practical advantage to himself why should the landlord still insist upon creating this harbour of subterfuge for his own agents as well as his raiyats and why should the Government in its zeal to placate the landlord be an abettor to this barren perfidy? In addition to the moral harm that it will perpetrate, do not the Government see that—

(1) it will decrease the value of raiyati holdings, because intending purchasers, with Damocles' sword of pre-emption hanging on their heads will not only be fewer in number but will come forward with poorer offers than they would have otherwise done;

(2) it will create a sense of insecurity amongst agriculturists that will prove detrimental to its proper growth and development;

(3) it will discourage sales and encourage usufructuary mortgages, the result of which will be most disastrous to the growth of agriculture. The money-lender mortgagees getting possession of the lands will cultivate them with the help of labourers and every one knows that agriculture under such conditions is bound to deteriorate. The raiyats will rarely be able to pay off these mortgages, which will be in due course foreclosed. The money-lenders will then be absolute masters of the lands and they will continue their cultivation by hired labour. Does the Government contemplate with equanimity upon a spectable like this?

(4) in these days of communalism it will give the communally minded landlord a unique opporunity to indulge in his communal whims and it is difficult to imagine what disastrous results may ensue from this or from organised communal campaigns carried on by a combination of such communalists. This may gradually lead to the extermination of whole classes of agriculturists in particular areas;

(5) it will interfere with the Muhammadan law of pre-emption. Certain classes of persons under the Muhammadan law, which has in this respect been wholly recognised by the new civil law introduced by the British, enjoy the preferential right of pre-emption. Of these classes only one,

the co-sharer by inheritance, or gift, is recognised by the present provision of a new kind of pre-emption embodied in the Bill and the other classes of pre-emptors under the law will have no preferential claim as against the landlord. This is another invasion upon the Muhammadan law and as such no Muhammadan can accept it under any circumstances. It is no use making any appeals to the Government, because appeals from certain quarters seem to be now under a ban. Appeal to others will be hardly better than the appeal of the hare to the hound;

(6) under the present law the raiyat could check most of the evil effects of the general non-transferability of his holding by taking shelter under the prevailing custom of part-transfer. A just and benign Government always wakeful to the interests of those who know how to hold their own, have under the pressure of a supreme sense of justice and compassion, in combination of course with those whom it is anxious to help, succeeded to demolish that objectionable resort of the cunning raiyat and has placed him at the absolute mercy of the landlord.

I do not like to multiply instances of the inevitable ill effects of an institution, which are palpable even to a child. The plea of keeping out undesirables is not a sincere plea as no one can cite a single instance which a landlord has hitherto exercised his right of not recognising a transferee against a single individual out of the large number of non-agriculturists purchasers who are gradually ousting bona fide cultivators. He will never exercise the right in the interests of agriculture, but the apprehension is that he will exercise it against persons on considerations quite different. He wants to keep the raiyat under his thumb so that he and his agents may not only squeeze out of him all they can, but make him vote as he likes, speak as he speaks, and think as he does. This is why he will not give up this noxious nuisance. This aspect of the question will assume momentous dimensions under the new politcal regime we all feel approaching. It is a pity that the Government also is an active party to this culpable attempt to darken the political future of those upon whose happiness and prosperity alone depends the true prosperity of the land. But let the Government and the landlord and those who are supporting his cause beware that their attempt to put the badge of slavery upon these teaming millions will in no distant day discharge the poison with which it is replete and contaminate the whole land with a malady that will see the end of arbitrary power and high-handedness.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, the question has been debated at great length and there is not the slightest doubt that the question is one of the utmost importance. Many points have been touched including the question as to what is the right of the landlord and what is the right of the raiyat; but there is one aspect of the question which has not yet been touched, and that is, who are likely to be the purchasers of these raiyati holdings? Are the likely purchasers of the raiyati holdings to be the fellow raiyats of the vendors or are they likely to be mahajans? Examine the question as to what will happen either at ordinary times or at times of distress. There is not the slightest doubt that at times of distress the ordinary purchasers will be the mahajans. Now, if the relations between the landlord and the raiyat be friendly, then this provision will positively very often be for the good of the raiyat, because at times of distress the mahajan is likely to purchase the land at a low price and the landlord will then be able to purchase the land and settle it again with the raiyat. This will undoubtedly be to the advantage of the raiyat. Now, Sir, take into consideration what will happen at ordinary times: at ordinary times, those who have any idea of rural conditions, know very well that the ordinary agriculturist cannot possibly compete with the mahajan. I mean no disrespect to Mr. James when I say that the attitude taken up by him and some members of the European group is perhaps due to their want of intimate knowledge of actual rural conditions. This want of intimate knowledge of rural conditions is perhaps the reason why some members of the European group have gone back upon the decision arrived at by their leader, Mr. Travers, who I venture to think, knows more about conditions in rural areas than my esteemed friends who are now trying without sufficient knowledge, to come to a decision about this very very difficult question affecting the well-being of rural areas. Mr. Travers is a signatory to the report of the Select Committee, and he accepted pre-emption as a sound proposition.

Maulvi NURUL HUQ CHAUDHURI: Did you give him all the materials?

The Hon'ble Sir PROVASH CHUNDER MITTER: In the report of the Select Committee we have this passage "and we are satisfied that the provision of section 26G, under which the landlord can purchase the property himself, will form a sufficient deterrent against any under-estimation of the value of the property". There are other passages in the report of the Select Committee where the signatories adduce further reasons for accepting pre-emption and Mr. Travers as a signatory to the report accepted pre-emption as a sound proposal. Now, Sir, my friend, Rai Mahendra Nath Gupta Bahadur, has explained at length the history of the matter. I may, however, shortly tell the House that an examination of the

history of pre-emption shows that there cannot be any doubt as to the acceptance of this provision of pre-emption. In 1883 the matter was considered by the Local Government, the Government of India and the Secretary of State and everybody accepted pre-emption.

Khan Bahadur Maulvi AZIZUL HAQUE: They accepted it without salami.

The Hon'ble Sir PROVASH CHUNDER MITTER: But as the main proposal about transferability was dropped, the question of pre-emption was dropped. Now, Sir, in 1922, when Sir John Kerr examined this question assisted by able Revenue Officers—the assistance of some of these officers I gratefully acknowledge to-day in public and without whose assistance it would have been impossible for me to deal with this matter—when Sir John Kerr examined this question with the assistance of able Revenue Officers and others who have intimate knowledge of rural areas, he came to the decision that pre-emption should be accepted. Later on the official members of the Select Committee of the Bill of 1925 unanimously accepted pre-emption. The then Government after an examination of the report of the Select Committee and such materials as were at their disposal also accepted pre-emption, and, lastly, we have it in the present Government Bill. It is the result of examination of opinions—not the one-sided and desultory opinions quoted before the House by my friend, Khan Bahadur Azizul Haque, opinions which, I can assure the House, were available to Government but fuller and more complete opinions as well as facts. I have explained to the House times without number that the Bill is not mine but is the result of careful consideration by Government for years; but I know these explanations are futile for those members who have made up their minds in advance and are inclined not to listen to such explanations. As a result of careful consideration extending over several years and examination of opinions collected and facts gathered from 1922 onwards, we find that in both Bills and in the official opinion of every committee there is the common element of the provision of pre-emption. It is a decision —a careful decision—of Government, and it was not possible for me—whatever my personal views might have been—to treat it lightly; but if the House decides otherwise, the responsibility will rest on the House and not on me. I know I have been criticised, because I stood by the Bill. I considered it my duty to stand by the Bill. I have no right to treat the Bill lightly. I can go further and say that in view of some representations made to me personally about this particular provision in the Bill, I went into the matter very very carefully and I came to the conclusion that I should entirely agree on the merits of the question with what the framers of the Bill decided.

Now, Sir, what are the objections? The main objection is that it will give an undue handle to the landlord and an undue handle against whom?—The supposition of the opponents of this proposal was that it would be an undue handle against the raiyat—and that point, I hope, I disposed of when I showed that it might be a handle against the vast majority of mahajans but not against raiyats. Therefore it is a question of competition between the mahajan and the landlord and not between the landlord and the ordinary cultivating raiyat (Question). Then, Sir, in any view of the fact that the purchaser will get back his money with 10 per cent. more within two or three months, what will be the incentive of the landlord to pay this extra amount? Why should the landlord go and pay this 10 per cent. and not merely this 10 per cent. but he foregoes his 20 per cent. (in the original Bill it was 25 per cent.)? He might have to incur some costs too. Why should he do all that? Those, who are familiar with rural conditions. know very well the vast majority of landlords cannot possibly afford to pay this extra money. Taking the 47 lakhs of tenure-holders perhaps 99 per cent. of them have not got the money. Ninety-nine per cent. of thees tenure-holders are perhaps landlords with an income varying from say Rs. 20 to Rs. 40 per annum. Then there are some 105,000 revenue-paying landlords. The vast majority of these landlords too cannot possibly buy under these conditions. Therefore as regards competition with the landlords there is very little chance. But as regards competition between mahajan and mahajan there is a chance. Then, Sir, what will be the effect on land value if the provision about pre-emption stands? It will mean a sort of standing offer with always the risk of somebody paying 10 per cent. more and naturally this will raise the value of land. Is it not likely that under such conditions the mahajan will try to pay his utmost, is it not likely that the poor cultivator who never sells his paternal acres unless he is utterly hard pressed, will get more out of it? Instead of buyers being shy, will it not tend to increase the price of land? Everyone who has not made up his mind in advance, without sufficient knowledge of facts, must agree that it will tend to raise the price of land. Now, if the mahajan knows that the landlord wants to stick to the land he proposes to buy he will offer such a price that it will not pay the landlord to pre-empt on payment of 10 per cent. But if the landlord pays it, there must be very good reason why he is willing to pay so much extra money and even then it will have the effect of making the next mahajan, who wants to grab the poor cultivator's land, wiser and more circumspect: he is likely to give a better value for the cultivator's land.

Now, look at it from another point of view—the point of view of the purchaser. Compare his position under the proposed law with

his position under the existing law. Under the present law, the purchaser, when he buys the land of a holding he does it at enormous risk. He buys it at the risk of an ejectment suit. If the landlord files an ejectment suit, and if he is ejected, he not only loses his money, he also loses his land, and he has to pay his own costs as well as the costs of the other side and also mesne profits. Therefore the price which he is likely to pay under the existing law will in all probability be very much less than what he will pay under the proposed law. He will run far less risk than what he does under present conditions.

I can well understand, Sir, the sympathy of Mr. James and other European members for the tenants. Coming from a land where the landlord community enjoys a position of wealth and influence, and being familiar with the history of the Irish land-tenure system, they probably think that the problem is the same here. But it is not the same.

I do not want to detain the House at this time of the evening, although much more can be said on the subject, but I would conclude by saying that the proposed provision will give the raiyat a better price for his land. It will confer on him a new right which he never possessed—he never possessed the right of transferability—and it will make the purchaser far more secure then he is to-day. I am sure that if the members of the House think over the matter dispassionately and examine this provision with an open mind, they will all vote for the Government measure, which has been prepared with so much care and circumspection by so many officers of Government.

The motion that in clause 23, the proposed section 26F, shall be omitted was then put and a division called for.

Mr. PRESIDENT: Before the House divides I should like to make two important announcements, and I think I had better make those announcements at this stage because almost all the members are now present in the chamber. We are engaged in discussing section 26 at the present moment. When that is concluded I propose to go back to clause 22 of the Bill, which deals with section 23A, relating to trees. Then I will take up such amendments as were not disposed of, sanction to them not having been received. After finishing them, I shall take up Part IV.

I have also to announce that His Excellency desires that this session should continue till the whole of the Bill is disposed of. Therefore, the Council will go on right into September, if necessary.

Babu JITENDRALAL BANNERJEE: On a point of order, Sir. This debate has not been allowed to run its full course. I would ask you to keep the matter open so that it may be discussed thoroughly.

Mr. PRESIDENT: I am afraid that is not possible. We have devoted nearly two hours and a half to this particular amendment, and I think that is more than sufficient.

Babu JITENDRALAL BANNERJEE: This question is one of the most important questions in the Bill, and after it is disposed of the other matters will become more or less formal.

Mr. PRESIDENT: I do not think I can comply with your request.

Maulvi NURUL HUQ CHAUDHURI: On a point of order, Sir. My amendment proposing that the consideration of this section be postponed sine die should have precedence over this amendment.

Mr. PRESIDENT: That amendment was ruled out of order.

The House then divided with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Bannerjee, Babu Jitendralal.
Chaudhuri, Maulvi Nurul Huq.
Fyfe, Mr. J. H.
Haque, Khan Bahadur Maulvi Azizol.
Huq, Khan Bahadur Maulvi Ekramul.
James, Mr. F. E.
Kaeem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Sarker, Rai Sahib Rebati Mohan.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Remes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prematha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bajay Krishna.
Bose, Mr. S. C.
Bose, Mr. Subhas Chandra.
Burge, Mr. B. E. J.
Casselle, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pramodra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Choudhury, Maulvi Khorshed Alam.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdalkerim.
Gilchrist, Mr. R. N.
Goenka, Rai Bahadur Badridas.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Himatsingka, Babu Prabhu Dayal.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Khan, Babu Debendra Lal.
Khan, Mr. Razaur Rahman.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.

Mitter, the Hon'ble Sir Prevash Chunder.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mukerji, Mr. S. C.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Ham Chandra.
Nelson, Mr. W. N.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Maharaja Jogindra Nath.
Ray. Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Roy, Dr. Sidhan Chandra.
Ray, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarbadhikari, Dr. Sir Deva Prasad.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 25 and the Noes 76, the motion was lost.

Adjournment.

The Council was then adjourned till 2-45 p.m., on Tuesday, the 28th August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Tuesday, the 28th August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (RAJA MANMATHA NATH RAY CHAUDHURI, of Santosh) in the Chair, the Hon'ble Mr. A. Marr, the Hon'ble Sir Provash Chunder Mitter, KT., C.I.E., the Hon'ble Mr. W. D. R. Prentice, C.I.E., and 113 nominated and elected members.

Starred Questions

(to which oral answers were given).

Détenu Jyotish Chandra Ghose.

*82. **Babu AKHIL CHANDRA DATTA:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state whether it is a fact that the monthly allowance of Srijut Jyotish Chandra Ghose as well as for his family has been stopped for the last two months?

(*b*) If so, what is the reason of such stoppage?

(*c*) Are the Government considering the desirability of expediting payment of his personal as well as his family allowance?

(*d*) Will the Hon'ble Member be pleased to state the present state of the health of Jyotish Babu?

(*e*) Are the Government considering the desirability of releasing him?

MEMBER in charge of POLITICAL DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (*a*), (*b*) and (*c*) No; the allowances are being paid.

(*d*) and (*e*) The Member is referred to starred question No. 68. answered on the 21st August, 1928.

Budget head of expenditure incurred for allowances paid to détenus.

*83. **Mr. D. N. ROY:** Will the Hon'ble Member in charge of the Political Department be pleased to state if any allowance is paid to any détenu under what budget head will that expenditure fall?

The Hon'ble Mr. W. D. R. PRENTICE: "47—Miscellaneous."

Mr. D. N. ROY: On a point of order. I asked some questions a few days ago about the détenu Jyotish Chandra Ghosh. Those questions except one were answered on the 21st August. One was disallowed by you and a letter was written to me by the Legislative Secretary "with reference to your questions I am directed to inform you that clause (*ii*) of the question has been disallowed by the President as it relates to a matter of individual and not public concern, *vide* section 26 (*1*) of the Bengal Legislative Council Rules and Standing Orders". I submit, Sir, you should consider this question as a matter of public concern. It is immaterial.....

Mr. PRESIDENT: You are arguing but you have not been able to make out any point of order.

Mr. D. N. ROY: I submit it is a matter of public concern since the allowances to the détenus are being paid out of the funds of which Government are in charge, and the Hon'ble Member has admitted that these allowances come out of certain budget estimates which under section 72 (*2*) have been laid before this Council and voted upon.

Mr. PRESIDENT: I think your point of order is this: whether such matters should be considered as matters of individual or public concern.

Mr. D. N. ROY: That is so.

Mr. PRESIDENT: I may tell you that I have been following precedents so far as this question is concerned. It has all along been the practice of this Council to disallow such questions. It may be that this money is given from public funds but all the same when a question refers to a particular individual who is interested in the distribution of that money, it becomes a matter of individual concern.

Mr. D. N. ROY: On the ruling you have just given are we to understand that a salary given to a public officer is not a matter of public concern?

Mr. PRESIDENT: That money certainly comes from public funds, but when a particular individual is affected in respect thereof, it is more or less a personal matter.

Mr. KIRAN SANKAR ROY: Is the salary paid to a Minister not a public concern although it is given out of public funds?

Mr. PRESIDENT: So far as the voting on that salary is concerned there is no doubt that it is a matter of public concern.

Mr. SYED MUHAMMAD ATIQULLAH: Is information about the health and physical condition of a détenu a matter of public concern?

Mr. PRESIDENT: Yes, it is following a precedent created by me in 1927.

Ex-détenu Kali Pado Ray Chaudhuri, medical examination of.

*84. **Mr. KIRAN SANKAR ROY:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state whether the medical examination of ex-détenu Srijut Kali Pado Ray Chaudhuri who is at present in the Medical College is over?

(*b*) If so, what is the result of the examination?

(*c*) Will the Hon'ble Member be pleased to lay on the table a copy of the report of the medical examination?

(*d*) What steps do the Government intend to take for his proper treatment?

(*e*) Have any steps been taken so far following the medical examination referred to above?

The Hon'ble Mr. W. D. R. PRENTICE: (*a*) No: a fresh series of radiograms were called for by the medical authorities and their report has not yet been received.

(*b*), (*c*), (*d*) and (*e*) Do not arise.

Unstarred Question

(answer to which was laid on the table).

Pingna Munsiff.

85. **Babu AMARENDRA NATH GHOSH:** (*a*) Will the Hon'ble Member in charge of the Judicial Department be pleased to state

whether there is any probability of the removal of the Munsif's Court from Pingna in the district of Mymensingh?

(*b*) If so—

(*i*) where is the Court to be located; and

(*ii*) when is the proposal to be given effect to?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (*a*) Government is at present not in a position to express any opinion in the matter as the subject is still under consideration.

(*b*) (*i*) and (*ii*) Does not arise.

Certificate under proviso (a) to section 72D (2) of the Government of India Act.

MEMBER in charge of DEPARTMENT OF FINANCE (the Hon'ble Mr. A. Marr): In accordance with the provisions of section 92 of the Bengal Legislative Council Rules, I beg to lay on the table a statement showing the action taken by the local Government and by His Excellency the Governor under section 72D (*2*) of the Government of India Act since the last session.

His Excellency the Governor having certified under proviso (*a*) to section 72D (*2*) of the Government of India Act in relation to the demand of Rs. 5,37,000 to meet the extra cost on account of revision of pay of certain subordinate ranks of the police force under the head "26.—Police" but refused by the Council, that this expenditure is essential to the discharge of his responsibility for the subject, the Government of Bengal direct that the above demand should be treated as if it had been assented to by the Legislative Council.

CERTIFICATE.

I hereby certify that the expenditure provided for by the demand of Rs. 5,37,000 to meet the extra cost on account of revision of pay of certain subordinate ranks of the police force under the head "26—Police" is essential to the discharge of my responsibility for the subject.

Sd. F. S. JACKSON,

Governor of Bengal.

DACCA:

The 27th August, 1923.

GOVERNMENT BILL.

he Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

Maulvi TAMIZUDDIN KHAN: I would like to move my amendment with a little alteration with your permission.

Mr. PRESIDENT: Did you consult the Hon'ble Member in charge of the Bill?

Maulvi TAMIZUDDIN KHAN: No.

Mr. PRESIDENT: What alterations do you propose?

Maulvi TAMIZUDDIN KHAN: My intention was not to delete the whole clause but to delete only the concluding words of the clause beginning with "whose existing interest has accrued otherwise than by purchase." May I now move my motion with this alteration?

Mr. PRESIDENT: In that case you had better support amendment No. 634, which will serve your purpose.

The following amendment standing in the name of Maulvi Tamizuddin Khan was therefore not moved:—

"That in clause 23 in proposed section 26F (*1*) clause (*a*) shall be omitted."

Khan Bahadur Maulvi EKRAMUL HUQ: I move that the proposed section 26F (*1*) (*a*) line 1, for the words "tenancy whose existing interest has accrued otherwise than by purchase" the following be substituted, namely: "or a settled raiyat or raiyat or under-raiyat of the village for at least 5 years or a permanent resident of the village where the tenancy is situate."

I need not say anything in support of this amendment. I simply leave it to the good sense of the House.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I oppose this motion. If this amendment is carried it will mean that any purchaser who is a settled raiyat and who is a co-sharer in a tenancy but also any purchaser who is a settled raiyat or under-raiyat or who is a resident in the village for at least 5 years will be protected from the exercise of the right of pre-emption by the landlord. This will go against the scheme of the Act because the reasons why pre-emption

was allowed by this House yesterday were to prevent undesirable tenants and to guard against under-valuation. In neither way the landlords will be protected if this exception clause be extended to those other than co-sharers only. A special concession has been given to those tenants who are already co-sharer tenants, for instance, if a brother or a cousin wants to sell his share to another co-sharer it is in the fitness of things that the landlord should not have the right of pre-emption because presumably he is not an undesirable tenant but a co-sharer in the tenancy already. For these reasons a concession has been made in such cases, but if we extend that concession in favour of a wide field of people like the settled raiyat or raiyat or under-raiyat or anybody who is a resident in a village for 5 years that would be nullifying the intention of the pre-emption clause. Therefore I oppose the amendment.

The motion of Khan Bahadur Maulvi Maulvi Ekramul Huq was then put and lost.

Maulvi ABDUL KASEM: I beg to move that in section 26F (*1*) (*a*) the words "whose existing interest has accrued otherwise than by purchase" shall be omitted.

I think I need not offer much inducement to the Government benches to accept this motion. The reason why we should protect the co-sharers against the zamindar's exercise of the right of pre-emption is that we think that the co-sharer ought to have the power of selling his land in the market but if this proviso stands he cannot do so unless his co-sharer is one who has a share in the holding by right of inheritance or he will not be so protected. Not only under the Muhammadan law of pre-emption but in equity and justice the co-sharer of a holding should have the right of pre-emption against the whole or part when a share in that holding is sold. But in this case simply because a co-sharer has acquired his right by purchase he is not only not given the right of pre-emption but pre-emption is against him. This is very undesirable. For the interest of agriculture as well as in all justice a co-sharer, even if he has purchased a holding, should be given protection as in the other case. There is no sense in saying that he cannot acquire a share because his right has only been purchased and has not accrued to him by inheritance. I think he should equally be protected. In the case of a zamindar a protection is given not only to him who has acquired his right by inheritance but also by purchase. If there is any justification of a landlord, who has purchased a property, to exercise the right of pre-emption, then I think there is double force in the argument that the tenants who have acquired their right by purchase should not only be protected against pre-emption but in my opinion should have the right of pre-emption also.

Maulvi SYED NAUSHER ALI: I beg to support this amendment. There is an amendment standing in my name just below it which is practically the same but with a little difference which I will explain later on. I would like very much to see this amendment passed but I shall have to give my reasons for it. It is natural for a human being, natural for a man who is here representing the cause of somebody, that he should give some reasons for any amendment that he proposes. But my experience in this Council during the last few days, and the repeated verdict of the majority of this House that we are unreasonable, and the repeated sermons that have been preached to us that we are raising false pleas in favour of the tenants, and that we are not just and reasonable to the landlords, compel me to be as brief as possible. In fact at one time I thought it would be the very height of folly and unreasonableness to try to induce any member of this House to be unreasonable with me. My reasons, I know very well, will not be accepted and will be declared by the majority in this House as unreasonable. Though I am sure of the fate of this amendment, though I know that there is not the least chance of its being accepted by the House, I am compelled to support it by circumstances beyond my control, by the dictates of my conscience and by the commandments of my religion. I must tell the House at once that if I had the right or might to wield the sword against what I consider to be the massacre of innocents, the dumb millions of Bengal, I would have done it. As I have not got that, as I cannot do that, the last weapon that I have got is the use of my tongue and what my religion commands me to do in favour of the tenants, is to use my tongue and that is what I am doing here.

I owe it to myself, to my constituency, to my country and to humanity at large to raise my feeble voice against this oppressive enactment and to give some reasons for my amendment. I know I cannot expect to induce members of this House to be unreasonable with me, but there is a vast majority outside this House who are keen about it and are watching carefully the proceedings and lest they should be led to think that this amendment is unreasonable I am giving some reasons.

With these preliminaries I will give my reasons, unreasonable though they may seem, to the House. The first point that I would submit to this House with regard to this amendment is the reputation of the argument on behalf of those who are going to oppose it. I will base my reasons, if they are reasons at all, on.....

Mr. PRESIDENT: You have been threatening to give your reasons from the very beginning of your speech but you have not delivered them as yet.

Maulvi SYED NAUSHER ALI: My reasons are these: The three points that have been urged, if I remember aright, in favour of this pre-emption are (1) the exclusion of undesirable tenants, (2) under-statement of value in the instrument of transfer and (3) an argument that was advanced by the Hon'ble Sir Provash Chunder Mitter that it would be a safeguard against the passing of lands into the hands of mahajans. I will deal with them one by one, the first as regards undesirable tenants.....

Mr. PRESIDENT: You are forgetting that in this case you have got to say why you are for the omission of the words "whose existing interest has accrued otherwise than by purchase." You need not go beyond that.

Maulvi SYED NAUSHER ALI: I am not going beyond that. I submit that a purchaser who acquires the right by transfer is not an undesirable tenant because he has been recognised as a tenant before. Therefore, the first point falls to the ground at once because he has already been recognised by the landlord to be a tenant in the case of a previous transfer and hence that ground does not hold good. If I am permitted to say one word in regard to these undesirable tenants, there is a general ground which may be irrelevant to the point.

Mr. PRESIDENT: If it is irrelevant, do not mention it at all.

Maulvi SYED NAUSHER ALI: It is not irrelevant in my opinion but I apprehend it may be thought irrelevant by the House. (Laughter.) My point is that the conception of an undesirable tenant is based on a misconception of the circumstances prevailing in the mufassal. There is nothing like an undesirable tenant in this country. The tenants in this country are illiterate.....

Mr. PRESIDENT: I am afraid you are drifting away from the real point.

Khan Bahadur Maulvi AZIZUL HAQUE: Is it not quite open to a member since that has been passed and there is no other alternative to hedge it round with circumstances?

Mr. PRESIDENT: But we are not discussing at this stage whether the tenants are desirable or undesirable, literate or illiterate.

Maulvi NURUL HUQ CHAUDHURI: Is it not permissible for a member to say that though there are certain undesirable tenants there are others who are not so. Cannot a member say that a particular person.....

Mr. PRESIDENT: I think it would be far better if Maulvi Nausher Ali is allowed to take care of himself.

Maulvi SYED NAUSHER ALI: I have been repeatedly interrupted and I am sorry I will have to leave the House very soon because I have got some business in the High Court.

Mr. PRESIDENT: We are not concerned with that as well.

Maulvi SYED NAUSHER ALI: I know that, Sir, but I am submitting.....

Mr. PRESIDENT: Will you please resume your seat?

Maulvi SYED NAUSHER ALI: I am obeying your ruling but Sir, I have not finished yet. I was giving my reasons one by one. If you overrule this point there are other points, but you are compelling me to take my seat.

Mr. PRESIDENT: It is far from my mind not to allow you to speak, but, I will not allow you to go beyond the limits of the amendment.

Maulvi SYED NAUSHER ALI: Sir, I am making my submission with regard to the undesirable tenants. I have made my first point with regard to them. My second point is that even admitting for arguments sake that there are undesirable tenants.....

Mr. PRESIDENT: If I can give you a piece of advice, the best thing for you would be to say something in support of those whose existing interest has accrued otherwise than by purchase. If you can make out a case for them, well and good. If not it is no use persisting in irrelevance.

Maulvi SYED NAUSHER ALI: If you will only allow me I can do so.

Mr. PRESIDENT: I allow you to speak but you must be to the point.

Maulvi SYED NAUSHER ALI: I am to the point.

Mr. PRESIDENT: If you go on like that I would ask you to resume your seat.

Maulvi SYED NAUSHER ALI: I give up the point with regard to the undesirable tenants. I think my first point is sufficient to convince this House that once you have recognised a tenant as not undesirable you have no right to say afterwards that he is an undesirable tenant. My friends on the other side may be laughing now. But they will have to weep some day and that day is not far off.

My second point is this: It is said that there is a fear of understatement of value of the land. As regards that there is already the document executed by this very man. That statement of value had been accepted as correct and there is very little fear of the land being under-valued.

My third point is that it will prevent land from passing into the hands of mahajans; and here there is no mahajan, there is the tenant himself. What sin does a man commit if he wants to purchase the entire holding after purchasing a small share. It may be that this man has constructed a hut in his holding and the landlord will at once find that he wants this land for his use and will send his tahsildar to say that if he does not pay so much he will not be allowed to have the other portion of the land. Sir, it is against all sense of humanity, if the tenant is left to the mercy of the landlord in this way.

Sir, I will say one word more. Take for instance that A is a transferee who has been recognised by his landlord on a previous occasion as a tenant. He dies leaving three sons—B, C, and D. Now D purchases the shares of B and C. Now his father being a co-sharer not by inheritance but by transfer D will not be entitled to avoid the pre-emption provision even in respect of the shares of B and C. The plea will at once be advanced that D will not be exempted from the operation of this clause because his share was given to him not by virtue of inheritance but by virtue of purchase. I submit this is a state of things which nobody desires and on this ground alone I commend this amendment to the acceptance of this House.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I support the deletion of this clause. Sir, if any proof is needed as to whether the present Bill is a landlord's Bill or a tenant's Bill, well then this clause will convince anybody that a great deal of ingenuity has been brought forth with a view to do something in favour of the landlords. Sir, so far as I have been able to gauge the purport of this clause, it is this: if a purchaser purchases a small interest in the land and thereafter wants to purchase the entire holding he cannot do so unless he pays a fee to the landlord. If the whole idea of the Bill is to put something into the pockets of the landlords then I can understand it. If all possible frauds are to be safeguarded then surely you can prevent it in other ways. I do not understand why this clause is

needed. A man purchases the property, he is a co-sharer in the land; what right has the landlord to say to him after some time that he was not a desirable tenant. If the Government says unequivocally and honestly that they wanted to put something into the pockets of the landlords, then I can understand the desirability of this clause. The Hon'ble the Revenue Member may say that he is not responsible for this Bill but that he is only piloting it. He is not the prophet but he is the zealous apostle for whom we suffer so much. It is evident that in any case the idea is to put something into the pockets of the landlords and not to safeguard the rights of the tenants. Sir, Government seems to have forgotten that their duty is not to give something to the landlords but to adjust relationship between landlords and tenants; and if that adjustment means paying something to the landlord always then the Bill is no relief for the tenants.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I am afraid there has been a lot of misunderstanding about this clause in the Bill. It is not a question of undesirable tenants in this case. As I have said in connection with the previous amendment the idea is that a tenant who is already a co-sharer ought to get concession and that in his case the landlord should not have the power to pre-empt; but where a man becomes a co-sharer by purchase, it is possible that he may be a bona fide purchaser or may be a dishonest man. This is to guard against fraud which otherwise would be inevitable. Supposing a tenant wants to buy an entire holding, but he is afraid of the landlord pre-empting him. What he actually does is to buy one kranti share, say for Rs. 200. The landlord does not object to him either as an undesirable person or because he pays well for that piece of land. He becomes a co-sharer. Then after a few months he comes to buy the whole land and in the documents he sets the value of the entire holding at Rs. 500 only. There the quesiton of under-valuation arises. By the insertion of this clause, the landlord will be prevented from exercising the right of pre-empting and avoiding under-statement of value. Therefore to prevent fraud both as regards under-statement and also as regards avoidance of paying the landlord's fee, this clause was considered to be necessary and so it has been included in the Bill.

Now, as regards the undesirable tenants Mr. Nausher Ali has asked if a person is considered desirable once, why should he be considered undesirable afterwards? But, Sir, such occasion may arise, for instance, there is a holding consisting of 10 plots. One plot is purchased by a man; he lives far away from the landlord's vicinity. The landlord has no occasion to complain. He is not undesirable from this point of view as he does not cause any inconvenience. Supposing the landlord is an orthodox Hindu and the purchaser is a chamar

by caste and he wants to purchase another portion of the holding contiguous to the landlord's house. In that case he will at once become undesirable owing to his dealing with hides and skins. In that case, Sir, the landlord will have every good reason to exercise his right of pre-emption and this clause will empower him to do so. I am not concerned here whether the landlord's fee is just or not: whether the amount is fair or not. All we are concerned with now is that when the fee is given we ought to see that it is properly safeguarded and not hedged in by all possible frauds.

Maulvi TAMIZUDDIN KHAN: I quite see that the intention of the Government is to prevent mala fide transferees to purchase after the first transfer without payment of the landlord's fee, but it has been admitted that a co-sharer is to be exempted from the operation of the rule of pre-emption. If this is so, then why should a bona fide purchaser be also not exempted. If the clause is accepted, as it stands, then bona fide purchaser will not be exempted and I think that is against the wishes of the framers of the Bill.

3-30 p.m.

Therefore, I think, the difficulty might have been very easily avoided and can even now be avoided if the Government be prepared to accept a middle course, that is, if the amendment be altered in this way that those purchasers whose right of purchase has accrued within 3 years or 5 years or within a reasonable limit of time, will not be given this right, but all other purchasers will be exempted from the operation of the right of pre-emption. I do not think that a man who purchased a holding 5 years ago could have the intention of defrauding the landlord 5 years before the purchase. Therefore, if these people are deprived of the right which is given to the co-sharers by this clause it will be a great hardship. I hope Government will accede to this little concession and will be prepared to amend the clause accordingly.

The motion of Maulvi Abul Kasem was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sulaiman, Maulvi Muhammad.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Bagchi, Babu Ramee Chandra.
Banerjee, Babu Premetha Nath.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Chose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Khan, Babu Debendra Lal.
Khan, Mr. Razaur Rahman.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Dr. Sidhan Chandra.
Ray, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Nalinirnjan.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 18 and the Noes 55, the motion was lost.

The following amendments were called but not moved:—

Maulvi SYED NAUSHER ALI to move that in clause 23 in sub-section (*1*) (*a*) of the proposed section 26F after the word "purchase" the words "liable to be set aside under the provisions of this section" be added.

Srijut TARAKNATH MUKERJEA to move that in clause 23 in the proposed section 26F (*1*)

(*i*) after clause (*b*) the word "or" be inserted; and

(*ii*) clause (*c*) be omitted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I beg to move that in clause 23, proposed clause (*c*) of section 26F (*1*), be omitted.

My reason for moving this amendment is that sales will be effected under the garb of exchange as there is no limit to area, situation or price. It will also be a means to reduce or avoid paying the landlord's fee.

The following amendments were called but not moved:—

Srijut JOGENDRA NATH MOITRA to move that in Bill clause 23 in proposed section 26F (*1*) (*c*), after the words "by exchange" the words "within the same mouja or village" be added.

Dr. KUMUD SANKAR RAY and Mr. KIRAN SARKAR ROY to move that in clause 23 in proposed section 26F (*1*) (*c*) after the word "exchange" the words "between one tenant and another under the same landlord" be added.

SECRETARY to the GOVERNMENT of BENGAL, DEPARTMENT of REVENUE (Mr. F. A. Sachse): Sir, the mover is afraid that somebody who has 500 bighas of land will exchange it with somebody else who has has got only one or two bighas and, of course, he will get about a lakh of rupees. If such a case ever happens, I am quite sure that the landlord can go to the civil court and get heavy damages for cheating. We have to wait and see if any such transactions occur. If so, then this Bill will have to be amended to meet the case. As a matter of fact, Settlement Officers in every district have found that exchanges are only made of small plots, very often less than a bigha, between genuine cultivators. In view of the fact that we have made the salami comparatively nominal, I do not think we need complicate the law by making elaborate provisions to prevent the landlord from not getting his full fee in every case.

The following motion was then, by leave of the Council, withdrawn:—

"That in clause 23, proposed clause (*c*) of section 26F (*1*) be omitted."

Maulvi ABUL KASEM: May I with your permission move the next amendment?

Mr. PRESIDENT: Did you consult the member who gave notice of this amendment?

Maulvi ABUL KASEM: But I think I can move this amendment with your permission.

Mr. PRESIDENT: I am very sorry I cannot give you permission, because you have not consulted the member who gave notice of this amendment and in this case I am not prepared to take it as your own motion on short notice.

The following amendments were called but not moved:—

Babu AMULYA CHANDRA DATTA to move that in clause 23 in the proposed section 26F—

(*a*) to sub-section (*1*) the following be added after clause (*d*); "(*e*) or to an agriculturist," and

(*b*) before the words "the immediate landlord" in sub-section (*1*) the words "any agriculturist of the village or contiguous villages and failing him" be inserted, and

(*c*) after the words "transferred portion or share" in sub-section (*1*) the words "and in case of transfer of a share or portion of holding a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase" be inserted.

Babu AMARENDRA NATH GHOSE to move that in clause 23 in section 26F in line 14 after the words "portion or share" the words "who has contiguous lands to the holding or the portion or share transferred" be added.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order, Sir. If a member after giving notice of an amendment does not move it, is it not open to another member to move that amendment?

Mr. PRESIDENT: Not in all cases. When the member is present in the House and does not move it, I think the Chair ought to refuse permission to another member to move the motion.

Maulvi ABUL KASEM: I submit that when a member has given notice of an amendment and refuses to move it, although he is present in the House, under the rules any member can move it with your permission. I therefore appeal to you in an important matter like this to grant us permission to move it.

Mr. PRESIDENT: I am afraid I cannot permit you to move it.

Khan Bahadur Maulvi EKRAMUL HUQ: On a point of order, Sir. Some member may have put in an amendment which might have escaped my notice before. But if I now find that it is an important matter, is it not fair that I should be allowed an opportunity of moving it.....

Mr. PRESIDENT: I decided this point the other day. I pointed out that an amendment was the property of the member who gave notice of it, and when that member was not present, the President had the discretion to allow any other member to move it. But the Chair can very well withhold his permission if he finds that the member member who wants to move the amendment has not consulted the member who gave notice of it or was actually going against his wish.

Khan Bahadur Maulvi AZIZUL HAQUE: In order to make things clear so that such things may not occur again in future, may we know under what circumstances the President will give his permission?

Mr. PRESIDENT: When a member who gives notice of a motion is unable to come and asks another member to move it on his behalf, or is not unwilling to move it himself, I have never refused permission in such cases. I, however, like to judge each case on its own merits and can always admit amendments on short notice.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I rise on a point of privilege. Is it not desirable that when an amendment is given notice of.....

Mr. PRESIDENT: You are arguing the point. It is not a point of law.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, you are wrong in thinking that I am arguing the point. I am raising a point of privilege and it cannot be raised without an argument.

Mr. PRESIDENT: I mean to say that I have already given my decision on the point, and it appears that you persist in arguing to prove that my decision is not correct.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, it is far from me to challenge the decision of the President. What we want to know is: under what circumstances a member will be allowed to move the motion of another member?

Mr. PRESIDENT: It is difficult for the President to anticipate under what circumstances permission should not be given; but I have already given the House sufficient hints on the point.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I am pointing out a case where a Bill affecting the rights of tenants is before the House and a certain member gives notice of an amendment which palpably

gives a certain amount of right to the tenant, and, rightly or wrongly, the party to which the member belongs does not want the amendment to be moved. Is it not open, in such circumstances, to another member to move it?

Mr. PRESIDENT: That point is covered by my decision. Did I not say that prima facie the amendment is the property of the member who had given notice of it?

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, May I point out whether.....

Mr. PRESIDENT: Khan Bahadur, you are taking up the time of the Council unnecessarily and I must ask you to resume your seat.

The following amendments were called but not moved:—

Maulvi SYED NAUSHER ALI to move that in clause 23, in proposed section 26F (*1*), for the words "two months" the words "one month" be substituted.

Raja BHUPENDRA NARAYAN SINHA Bahadur of Nashipur to move that in clause 23, in proposed section 26F, for the words "two months" in three places where they occur the words "three months" be substituted.

Raja BHUPENDRA NARAYAN SINHA Bahadur of Nashipur to move that in clause 23, in proposed section 26F (*1*), line 4, from the end, for the words "two months" the words "six months" be substituted.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 23, in proposed section 26F (*1*), line 4 from the bottom, for the words "two months" the words "two weeks" be substituted.

Sir, it has been admitted by or rather conceded from the Government benches that the period of suspense on the part of the transferee should be as brief as possible. In the Bill, as drafted, the period of suspense has been made two months. That seems to me to be an unreasonably long period. After the landlord gets notice, two weeks' time is quite sufficient for him to gather all the information that is necessary for him to decide whether he should exercise his right of pre-emption or not. It seems to me to be horrible for the transferee to be in suspense for a period of two months and then also for another period if proceedings are instituted, for the result of the proceedings. Therefore, I think this little concession may be made to transferees by reducing the period of suspense from two months to two weeks as I propose.

Mr. F. A. SACHSE: Sir, if the mover of this amendment will look at section 26F, 4 (*a*), he will see that the period referred to in sub-section (*1*) is the limit of time not only for one landlord to apply, but for all other co-sharer landlords who hearing that one co-sharer has applied also go to the Court and apply to be made joint applicants with the first applicant. The whole transaction of section 26F is proposed to be confined to the period of two months, and in view of the provisions we are bound to make in section 4 (*a*), I think that two months is the very lowest time we can fix. We would like to make it shorter if we could; but we think that two months is a very reasonable limit.

The motion of Maulvi Tamizuddin Khan was then put and lost.

The following amendments were called but not moved:—

Babu NALINIRANJAN SARKER to move that in clause 23, in proposed section 26F (*1*), line 15, after the words "notice issued" the words "upon him" be inserted.

Maulvi SHAMSUR-RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 23, in the proposed section 26F (*1*), line 3, from the bottom, for the words "apply to" the words "sue in" be substituted.

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR RAHMAN to move that in clause 23, proposed section 26F (*2*), line 1, for the word "application" the word "suit" be substituted.

Maulvi ABUL KASEM: I beg formally to move that in section 26F (*1*), after the words "transferred to himself" the following proviso be inserted, namely:—"Provided that the immediate landlord of the holding require the transferred portion or share for his own use and in case the landlord wants to lease it out to any other person the purchaser shall have option to have it re-conveyed to him."

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I oppose this amendment. If we add the proviso that the amendment seeks to add, the whole section will become innocuous, practically useless. The proviso is that if the landlord wants a land for his own use, in that case alone he shall be entitled to pre-empt. To begin with, the word "use" has been used in a wide sense and if it is used in a section of the Act it will cause complications; but apart from the wording on principle it will be wrong to include this proviso, having regard to the principle on which the section about pre-emption has been passed in this House. As I have already explained the reason

why pre-emption was allowed was the avoidance of undesirable tenants and the prevention of fraud as regards the amount of landlord's fee. If this proviso be added, none of these things will be safeguarded. On the other hand, the question will arise whether the landlord wants the land for use which is legitimate or not and then it will lead to a lot of litigation which is undesirable.

As regards the second part which says that in case the landlord wants to lease it out to any other person, the purchaser shall have the option to have it reconveyed to him, this has probably been taken from a similar section in the case of under-raiyat where he wants to recover possession of his land if the superior landlord, after ejecting him, does not use the land for his own cultivation. Here also it will lay open the door to litigation. For these reasons I strongly oppose the amendment.

The motion of Maulvi Abul Kasem was then put and lost.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 652 and 653.

Maulvi ABUL KASEM: Sir, I beg to move that in section 26F (*2*), lines 2 and 3, the words "or within such period as the Court may fix" shall be omitted.

With your permission, I would like to add to it that in line 4 of sub-section (*5*) of the said section the words "within the period fixed by Court" shall also be omitted.

Sir, in doing so, I submit the very fact that the landlord has been given two months' time to decide whether he will exercise his right of pre-emption or not, and to extend it by another period will put both the seller and the buyer in great difficulty. The buyer, so far as our experience goes, will not get his money, unless it is known whether the landlord will exercise his right of pre-emption. So, under these circumstances, I trust that the landholding classes will not press for this extension of time in which to exercise their right of pre-emption.

The following amendment was called but not moved:—

Babu NAGENDRA NARAYAN RAY to move that in clause 23, in sub-section (*2*), of the proposed section 26F, after the words "as the court may fix" the words "not extending beyond the period of two months referred to in sub-section (*1*)" be inserted.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): Sir, we are prepared to accept Mr. Abul Kasem's amendment and his further

amendment. The whole object of this clause is to have a speedy determination of the right of pre-emption, and from that point of view we are prepared to accept the alterations suggested by him.

Mr. PRESIDENT: I had better read out to you the second alteration suggested by Mr. Abul Kasem. It is to the following effect:—

That in clause 26F (*5*), line 4, the words "within the period fixed by the Court" shall be omitted.

Sir PROVASH CHUNDER MITTER: Sir, we are prepared to accept this alteration also, subject to the Legislative Department seeing that it is in order. We have not had an opportunity yet to see whether it has been properly drafted.

The motion "that in section 26F (*2*), lines 2 and 3, the words "or within such period as the Court may fix" shall be omitted and in sub-section (*5*), line 4, the words 'within the period fixed by Court' shall be omitted," was then put and agreed to.

Mr. PRESIDENT: I will have one discussion on amendments Nos. 654, 655, 656 and 657.

Mr. JOGESH CHANDRA GUPTA: Sir, Rai Harendranath Chaudhuri, a member of our party, is unwell and he has desired me, subject to your permission, to move the amendment which stands in his name.

Mr. PRESIDENT: You have my permission if he has actually desired you to move it.

Mr. JOGESH CHANDRA GUPTA: I beg to move that in clause 23 proposed section 26F in line 4 sub-section (*2*) for the words "the consideration money" the words "money actually paid by the transferee or the auction-purchaser" be substituted.

Sir, the necessity of this amendment will appear if we refer to clause (*6*) of section 26C, which says—

> "Any sum payable at the date of the transfer as an arrear of rent of the holding, or on account of a mortgage of the holding, or portion or share thereof, which the transferee has paid or agreed to pay in satisfaction of the sale price wholly or in

part shall be entered in the instrument of transfer, and such sum shall, as set forth in the instrument be deemed to be the consideration money or part thereof, as the case may be, for the purpose of sections 26D and 26F."

Now, Sir, this amendment seems to make it clear that the landlord is bound to pay 10 per cent. on the consideration money that has been actually paid by the transferee.

4 p.m.

Now this amendment seeks to make it clear that the landlord will be bound to pay 10 per cent. and the consideration-money that has been actually paid by the transferee, and will not be called upon to pay 10 per cent. on the whole of the consideration-money, as mentioned in the instrument. If this is not accepted, there may be an ambiguity as to whether the landlord will be required by the court to pay the whole of the consideration-money, including those charges which are to be subsequently paid by him, or the actual amount of money that is paid by the transferee. I hope, Sir, the Government will see their way to accept this amendment.

Srijut JOGENDRA NATH MOITRA: Sir, I beg to move formally that in Bill clause 23, in proposed section 26F (*2*), lines 4, 5 and 6, for the words "consideration-money or the value of the property, as the case may be" the words "money actually paid by the transferee" be substituted.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I beg to oppose this amendment. The expression "consideration-money" is a legal term and is well understood. Here, it is the amount set forth in the document, and this was put in the clause intentionally. The object is to stop any further dispute on the question as to what was the amount of consideration-money. Moreover, there is another point. If we substitute "money actually paid" for the present wording, it will raise various questions which will require evidence to be gone into and will make the pre-emption proceeding a complicated suit. Take for instance a particular case. A raiyat has borrowed Rs. 100 from a certain person and Rs. 80 has accumulated as interest. He sells his land against the total sum of Rs. 180 to the man from whom he borrowed the money. In this case, what is the amount actually paid—Rs. 100 or Rs. 180? Certainly, the landlord cannot be permitted to pre-empt by only paying the principal amount; but that is the money which has been actually paid. There may be similar instances of this nature, but the fundamental principle underlying the

whole set of provisions about pre-emption is that the amount in the sale-deed should not be disputable on any ground whatsoever later on. It is on that and that clear understanding that we have agreed to have these pre-emption clauses in this Bill. We are very strongly opposed to anything which may require the court in a pre-emption proceeding to go into evidence in order to decide one point or another, much less to decide what amount was actually paid in cash or in kind or in service. We do not want to have these complications introduced. I explained yesterday and the Hon'ble Member also explained that it was a matter of paramount importance that the pre-emption proceedings should be disposed of in as short a time as possible. If any complications were not introduced, there might be something to be said in favour of this amendment. If, however, any complications were introduced, the result would be a prolongation of the proceedings, with the consequence that purchasers would be shy—even the speculating purchaser would be shy—and the raiyat would not get the full value of his land. He will lose, and the landlord will also lose, because the salami will be reduced. All these things will have to be taken into consideration.

Further, if we do anything which is likely to prolong the proceedings and to extend the period of suspense—as is bound to happen if we introduce matters of this nature to be decided by the court in simple pre-emption proceedings—the cultivation of the land will be affected. The purchaser will not, being in a state of suspense for a long time, cultivate the laud. That is a very serious contingency which we should guard against. There might be a slight unfairness as regards one or two minor points, but those should be ignored and passed over. We cannot provide for every contingency. We must look to things of paramount importance and guard against serious difficulties which may otherwise arise.

As I have explained, Sir, from some point of view it will be unfair to some people—I think I have given one instance in which it will be unfair. In this case the mahajan, I am afraid, will not submit to losing his interest but will certainly saddle it on the back of the tenant. Sir, if this amendment be passed, these and other difficulties affecting both the landlords and the tenants would arise, though we might gain a very trifling advantage. In the instance I have cited it would be an unfair advantage. Even if there be any advantage, at what cost will it be gained? I submit that it will be gained at a very serious cost, and therefore I strongly oppose this amendment. Sir, we earnestly hope that this amendment will not be pressed further.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I am afraid, Sir, that there is some confusion of ideas about this amendment, and from the speech of the Rai Bahadur which we have just now heard

it appears to me that he has not been able to appreciate the spirit of this amendment. He said that the term consideration-money is a very well-known legal term, and that there can be no legal difficulty whatever in understanding the meaning of this expression. It is not a question of the ordinary legal term or otherwise, because it has been actually defined in the Bill itself. Clause (*6*) of proposed section 26C says:

> "Any sum payable at the date of the transfer as an arrear of rent of the holding, or on account of a mortgage of the holding, or portion or share thereof, which the transferee has paid or agreed to pay in satisfaction of the sale price wholly or in part shall be entered in the instrument of transfer, and such sum shall as set forth in the instrument be deemed to be the consideration-money or part thereof."

So, it is perfectly clear what consideration-money means as it is used in the present section, viz., section 26F. Now, the position might be made clear by an illustration. Suppose I purchase a piece of land for Rs. 1,000, which is the consideration-money for the land. I actually pay Rs. 500 in cash and take upon myself the liability to pay the arrear of rent of Rs. 300 as well as a liability to pay Rs. 200 for mortgage. This sum of Rs. 500 is not actually paid, but it falls within the meaning of the consideration-money by clause (*6*) of proposed section 26C. The question will naturally arise, when the landlord goes to a court for the purpose of repurchasing, as to how much the landlord will have to deposit—Rs. 500 or Rs. 1,000; because I have not actually paid Rs. 1,000, I have merely taken upon myself the liability to pay Rs. 500 later on. If I have not paid the money as mentioned in the instrument of transfer, will it be fair for the court to say that the landlord must deposit Rs. 1,000. All that the amendment seeks to do is that for the words "the consideration-money" the words "money actually paid by the transferee or the auction-purchaser" shall be substituted. (RAI MAHENDRANATH GUPTA BAHADUR: He gets salami on Rs. 1,000 all the same.) Yes, but why should he pay Rs. 1,000 to the transferee? The purchaser takes upon himself to pay Rs. 500: The landlord steps into the shoes of the transferee and he accepts the charge on account of the mortgage, and there is no reason why he (the landlord) should pay down Rs. 1,000 and take the liability upon himself for the mortgage and other sums which the transferee might have agreed to pay. That is the whole meaning of this amendment, and in that view of things I submit that what has been said from the Government benth as regards complications is without any foundation. I do not think there is absolutely any apprehension regarding complications coming in. On the contrary, it seems to me that it would make matters simpler.

The present provision is likely to make matters complicated, and in that view of the case I submit that there is no difficulty in the way of Government accepting this amendment.

Babu SURENDRA NATH BISWAS: Sir, I think there is some misunderstanding about this amendment. I should say that the landlord must pay the full value of the land. Whether the transferee pays the whole amount or a portion and agrees to pay the remainder, the question is whether the transferee should be relieved of all liabilities to pay off debts which he has agreed to pay. The land passes away from the hands of the transferrer, the moment he transfers the land. The interest in the land devolves on the transferee, and the liability to pay the full sale price by paying down cash at the time of transfer or by agreeing to pay a portion later on also passes on to the transferee. Now, if the landlord has to exercise the right of pre-emption, he must pay down the sum which has been either actually paid or which has been agreed to be paid by the transferee. But if we accept the amendment that in line 4, sub-section (2) in proposed section 26F, for the words "the consideration-money" the words "money actually paid by the transferee or the auction-purchaser" shall be substituted, then the transferrer is injured, because the landlord pays down only the money which the transferee pays actually and neither the landlord nor the transferee remains bound to pay the money which the transferee agreed to pay but has not paid.

I submit, Sir, the real difficulty is whether the landlord should pay the 10 per cent. compensation in regard to the money which the transferee did not pay. So, with your permission, I propose to move an amendment that for the words "such amount" in line 7, sub-section (2) of proposed section 26F, the words "the money actually paid by the transferee or the auction-purchaser, as the case may be" shall be substituted. My point is that the landlord should pay the compensation of 10 per cent. on only the money which has been actually paid by the transferee and not on the money, which he has agreed to pay. The transferee should get compensation only on the money paid down and he should not be entitled to get any compensation on the money which he agreed to pay. With your permission, Sir, I want to move the amendment which I have just now proposed.

Mr. PRESIDENT: Mr. Biswas, you are not moving an amendment: you are supposed to speak on the amendment which is before the House.

Babu SURENDRA NATH BISWAS: Sir, with your permission I want to move the amendment which I have proposed.

Mr. PRESIDENT: I cannot permit you to do that.

Khan Bahadur Maulvi AZIZUL HAQUE: For the first time it seems that Babu Jogindra Chandra Chakravarti has opened his lips. I congratulate him on his courage but I hoped he would have come out yesterday by showing a little more courage; but better late than never.

Sir, I am afraid my friend's simplicity is not so simple as it is represented to be. It is supposed that the words "consideration-money" should be deleted and in its place we are asked that the money actually paid to the transferee or the auction-purchaser should be substituted. May I submit if it is done it would immediately open the flood-gate of litigation. The landlord in filing his objection would say that it was not the money which was actually paid but it was much less than that. It would only be possible to find out what was actually paid after you put in evidence. My friend has forgotten one chapter of incident in this connection. When it is a question of salami the landlord will get 20 per cent. of the consideration-money. Sir, the consideration-money is defined in clause 26 (*c*). The landlord must pay down his money before he can exercise the right of pre-emption. Sir, the right of pre-emption has in every law been hedged round carefully with conditions. Here you are going to be very generous. "Money actually paid" is not defined in this Bill and when it is not defined, then it is sure to lead to litigation. Therefore I do not think that this is a thing to which we can agree. We have lost the pre-emption clause but it is our intention to see that other clauses are kept in such a way as not to give scope to litigation. Therefore, I oppose the amendment.

Mr. B. E. J. BURGE: I oppose this amendment. It seems to me that this amendment is a very dangerous one indeed. If we accept the principle that a raiyat's land is a valuable security, it follows that on that land only he is able to raise money. It may be in the form of a mortgage or it may be in the form of an ordinary loan. With a mortgage some difficulty may arise in the disposal of the mortgagee after the money has been paid. Suppose the land is worth Rs. 1,000 and the raiyat has raised a loan of Rs. 800 on that land as security, then he sells the land to the man from whom he borrowed the money and in consideration of that loan the mahajan pays him Rs. 200 more as the purchase-money. If this amendment is accepted the landlord can have the land by paying only Rs. 220 as the purchase-money. Nothing will depreciate the value of the land more than this if this amendment is accepted. Under section 26F there is no reason why the court cannot pay off the mortgage out of the money paid in the court.

Mr. JOGESH CHANDRA GUPTA: Sir, I understand Government is going to accept a portion of this amendment. In that view I beg to withdraw my amendment.

The motion of Mr. Jogesh Chandra Gupta was then, by leave of the Council, withdrawn.

Mr. F. A. SACHSE: Sir, the proposal is to accept an amendment under section 26 (*5*), and not under this clause.

The motion of Srijut Jogendra Nath Moitra was then put and lost.

The following amendments were called but not moved:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, and Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 23, in the proposed section 26F (*2*), line 4, after the words "consideration money" the words "actually paid by the transferee" be inserted.

Dr. KUMUD SANKAR RAY, Mr. KIRAN SANKAR ROY and Babu SACHINDRA NARAYAN SANYAL to move that in Bill clause 23 in proposed section 26F (*2*) the following words be omitted, namely: "together with compensation at the rate of ten per cent. of such amount."

Khan Sahib ABDUS SATTAR to move that in clause 23 in the proposed section 26F (*2*), lines 7 and 8, for the words "together with compensation at the rate of ten per cent. of such amount" the following be substituted, namely: "The tenant must give a notice in writing through the Collector of the district to the landlord of his intended sale before the sale deed is executed, stating the offer he received with the name and address of the purchaser."

Mr. PRESIDENT: I will have one discussion on 662 to 665, 666, 667, 668, 669, 670, 671, 672.

Maulvi KASIRUDDIN AHAMAD: I move that in clause 23, in the proposed section 26F (*2*), lines 7 and 8, for the words "ten per cent." the words "twenty-five per cent." be substituted.

Sir, it is just and equitable that the landlord who ejects a purchaser of a holding for purchasing the same for himself should give 25 per cent. of the consideration money as compensation to the purchaser ejected. This will, I believe, serve as a salutory check on the whims and caprices of the landlords to a reasonable extent and will minimise the number of unnecessary and vexatious litigations.

The following amendment was called but not moved:—

Babu ROMES CHANDRA BAGCHI and Babu AMARENDRA NATH GHOSE to move that in clause 23 in proposed section 26F (*2*) in lines 7 and 8 for the words "ten per cent. of such amount" the words "twenty per cent. of such amount" be substituted.

Maulvi TAMIZUDDIN KHAN: I move that in clause 23, in proposed section 26F (*2*) in the last two lines, for the words "ten per cent." the words "fifteen per cent." be substituted.

Sir, the Bill provides for 10 per cent. as compensation. The question is as to whether it is adequate. There may be cases in which it would be found to be entirely inadequate. Apart from the mental suspense in which the transferee shall find himself for which alone he can demand some compensation, materially also 10 per cent., is very inadequate. Suppose a man purchases a holding for Rs. 50 and the transferrer is a woman. They live 10 miles away from the sub-registry office. Apart from other expenses the woman was to be brought to the sub-registry office. A duli has to be hired and various other incidental expenses to be incurred. The purchaser only gets Rs. 5 as compensation but practically he will have to spend something like Rs. 15 or Rs. 20. Therefore, I think, the amount of 10 per cent. is quite inadequate and I think 15 per cent. is a very modest demand. Of course I shall be very glad if the amendment of Maulvi Kasiruddin Ahamad be accepted, but I am afraid his amendment as well as mine have got no chance of being accepted, but still I would appeal to Government to consider whether they can accept my amendment.

The following motion was called but not moved:—

Babu AMARENDRA NATH GHOSE to move that in clause 23 in proposed section 26F (*2*) in lines 7 and 8 for the words "ten per cent." the words and figures "12½ per cent." be substituted.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: I move formally that in clause 23, in proposed section 26F (*2*), in lines 7 and 8 for the words "ten per cent." the figures and words "6¼ per cent." be substituted.

The following motion was called by not moved:—

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 23 in the proposed section 26F (*2*), lines 7 and 8, for the words "ten per cent." the words "five per cent." be substituted.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I oppose all these amendments. The amount of compensation provided for in the Bill is 10 per. cent. Some of the amendments propose 25 per cent., some 15 per cent., and the Raja of Nashipur proposes 6¼ per cent. Sir John Kerr's Committee put it down at 10 per cent. All the Committees which subsequently sat considered this amount of 10 per cent. to be quite fair. Considering that this 10 per cent. compensation is only for a period of two months it works out at about 60 per cent. per annum which I think would satisfy anybody. Under these circumstances I think the sum adopted in our Bill is fair and should be accepted.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, the motions that are before the House as also the one which I have moved all aim at preventing the landlords from cheating the tenants. We have been told that Government, by putting in the clause on pre-emption, have provided a safeguard for the landlords which will enable them to get proper amount of premium or in other words by this clause Government have prevented the tenants from cheating the landlords. And our proposal before the House is how to prevent landlords from cheating the tenants. The amount that is provided in the Bill is 10 per cent. only over and above the purchase money.

4-30 p.m.

If A goes to sell his property to B, he will certainly take particular note of the fact that he has to pay a certain amount to B and he also knows that B has the option if he so desires to re-enter upon the land and oust A from there and on the payment of what sum of money, do you think? It is only a nominal sum of Rs. 10 per cent. If the value of a holding is Rs. 110 or 120 do you reasonably think that a purchaser will put in Rs. 100 as the price. What amount does he save by this means? He saves only Rs. 2 or Rs. 4 only. Will a man who wants to purchase land, for the purpose of saving Rs. 2 or Rs. 4, will stand the chance of losing it? Certainly not. If he is in need of land he will certainly put in the proper price while on the other hand though A is very much in need of land but because B the landlord wishes to take advantage of the sale knowing full well that an agriculturist purchases a land he never means to give it up the zemindar can and will insist on the payment of much higher premium than 20 per cent. The purchaser will be under the painful necessity of paying the landlord at least 10 per cent. over and above the 20 per cent. provided for in the Act. Undesirable tenants may be inducted upon the land that is why Government has fixed the minimum of 10 per cent. to enable the landlord to pre-empt. If you actually want to secure the landlords from being cheated then the amount ought to have been much higher than 10 per cent.—it ought to have been at least 25 per cent. A purchaser who pays a lesser amount as price he will at least put Rs. 50 less in every hundred and even then he will save only Rs. 10 in the shape of premium. So far as this question of undesirable tenants is concerned, the Maharaja of Mymensingh has got land in Murshidabad, do you think he will be disturbed in any way if a person comes in and purchases his land in Murshidabad? Certainly not. To my mind there will not be a single case in which an undesirable person will be inducted upon a particular piece of land. It is absurd to put in a clause on pre-emption on this ground and to make it 10 per cent. only over and above the purchase money.

Again, it has been said that the raiyat will get the full price, but the case will be just the reverse, he will get much less. If A purchases land from B he will have to remember that the price is not the only thing to be paid, the gomasthas and other petty officers of the zamindar have got to be paid and in many cases the zamindars will have to be paid over and above his legal dues or else A may be ousted. Thus the seller will be getting much less than the actual price of his land. When you say that by putting the clause on pre-emption you protect the tenants from being ousted and the land passing into the hands of mahajans, I think even there you are not right. You have never saved nor will ever save the agriculturists from the hands of the mahajans. Under these circumstances I do not think it is right to put in a small amount as 10 per cent. as it is an amount which will enable landlords to purchase the land sold to other men and speedily make the tenants labourers.

The motion of Maulvi Kasiruddin Ahamad was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Kasem, Maulvi Abul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sulaiman, Maulvi Muhammad.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Prometha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraborty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Forrester, Mr. J. Campbell.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. H. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Gilchrist, Mr. R. N.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Khan, Babu Debendra Lal.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Lala, Babu Sarada Kripa.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. S. R.
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prasanna Deb.

Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray Chaudhuri, Mr. K. C.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Saohee, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 16 and the Noes 69, the following motion was lost:—

"That in clause 23, in the proposed section 26F (*2*), lines 7 and 8, for the words 'ten per cent.' the words 'twenty-five per cent.' be substituted."

The following motion was then put and lost:—

"That in clause 23 in proposed section 26F (*2*) in the last two lines, for the words 'ten per cent.' the words 'fifteen per cent.' be substituted."

The following motion was then put and lost:—

"That in clause 23 in proposed section 26F (*2*) in lines 7 and 8 for the words 'ten per cent.' the figures and words '6¼ per cent.' be substituted."

[At 4-40 p.m. the Council was adjourned and it reassembled at 4-50 p.m.]

The following amendment was called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that in clause 23 in sub-section (*2*) of the proposed section 26F for the words "of such amount" the words "of the consideration" shall be substituted.

Babu NAGENDRA NARAYAN RAY: I beg to move that in clause 23, in the proposed section 26F (*3*), line 7, after the words "on the property" the words "or for purposes of cultivation or for necessary improvement of the holding" be inserted.

My reason for moving this amendment is that if after transfer the transferee spends money for the purposes of cultivation or for necessary improvement of the holding he must be indemnified in cases of such expenditure. For example, if the transferee spends money in making arrangements for irrigation in the plot of land or in making such other improvements which increase the value of the land, he should receive back the amount of money he may spend for such purposes as these. A compensation of 10 per cent. is hardly adequate to meet such cases. Further, the amount of 10 per cent. provided in the Bill is to meet the expenses in connection with the transfer and not expenses after registration. So, the Statute should make some provision so that the transferee may get back the amount of expenditure which he may incur in this direction.

Rai MAHENDRA NATH GUPTA Bahadur: I beg to oppose this amendment. Perhaps in theory it looks rather nice but what material improvement of the land is likely to be made in the course of two or three months? In practice, therefore, it is a thing which is unnecessary and is of no material importance. On the other hand it will introduce complications and may even lead to prolongation of the proceedings. Evidence would probably have to be adduced as to what amount has been spent or the number of men that have been employed in cultivation or in doing this or that on the land. All these should be avoided.

5 p.m.

As I said, no improvement is likely to be effected and no large expenditure spent in two or three months during which the pre-emption proceeding would last, and we are to guard and guard very carefully that pre-emption proceeding does not last for more than two or three months. That would be more effective than trying to get round in these indirect ways.

Khan Bahadur Maulvi AZIZUL HAQUE: I have become a little nervous since I heard the Hon'ble Sir Provash Chunder Mitter's speech yesterday. Never before I saw him in that arrogant attitude as I found him yesterday when he condemned friends and foes alike in no unscathing terms and had his eulogies for only one gentleman, Mr. Travers, because it suited his purpose. He said Mr. James is a gentleman who does not know anything of this country; the Europeans might know much of England and English landlordism but nothing of this country, and he said virtually to the effect that whatever might be our view, Government must ultimately stand by its own. Since I heard this I became nervous. Last year our services were very much needed, as well as of the very group which is represented by Mr. James. But now an occasion has arisen when they have been abandoned like hot potatoes. However, I do not want to appeal to the sentiments of the Hon'ble Member, but I do once again appeal to the Government as a whole for the simple reason that this amendment is logical and equitable and would serve the best interests of all parties concerned. The arguments against pre-emption have been gone into, and we have now come to a stage when we have to see that the right of pre-emption is not misused. Does the Government think that for the period of four months or a shorter period, as has been suggested by the Rai Bahadur, the economic development of the country will remain at a stand-still, the cultivator will not till the soil, no development will be made and nothing will be grown, no vegetables and nothing of the sort, because perchance the landlord will come down upon the tenant and exercise his right of pre-emption? Such a state of thing is perhaps inconceivable, and if the Government

does not want that the cultivator should not go to the soil, then this amendment should be accepted. The amendment says the court shall give notice to the transferee to appear and state what other sums he has paid for purposes of cultivation or for necessary improvement of the holding. I know the onus of proof will lie on the tenant, but there is no reason why he should be deprived of his cost, unless the Government wants that for these four months nothing should be done. I do not know whether any such proposition has ever been started anywhere in the world. Yet that is the very thing which the Government here wants to do. I do not say anything impassioned in any mood of anger, but I would remind the Hon'ble Member in charge, of one sentence which he wrote in his own note of dissent. He said "I also apprehend that class warfare will be a feature of the future." Will he kindly remember that sentence when dealing with this amendment to-day? Supposing a man goes to the land and cultivates it and then he is deprived of the land; what will he do? Is it not simply asking him to take the law in his own hands? I hope the Hon'ble Member in charge is now satisfied that the landlords have got justice and all that the Government can do. Is it not also desirable that the tenants should get a little justice? I will not say anything more except that they should not be deprived of the cost of cultivation or any other incidental expenditure that they may have incurred. In conclusion, I must say that we on this side of the House very much regret the tone in which the Hon'ble the Revenue Member spoke of Mr. James yesterday—Mr. Travers knows everything and Mr. James does not know anything; that is exactly the expression that was used with reference to a member of this House. Supposing a gentleman tells him that the Hon'ble Revenue Member has never gone beyond Calcutta and yet wants to force his knowledge in a Bengal Tenancy Legislation, I believe, he will alike feel uncomfortable.

Maulvi NURUL HUQ CHAUDHURI: Sir, I rise to support this amendment. This is one of those simple amendments which add a little human touch to an otherwise inequitable law. Whatever may be the interest of the landlords and tenants it is a matter of vital importance to the community as a whole that the land should be cultivated, and that the agricultural operations should not cease simply because at some indefinite future time, i.e., within two months the landlord may chose to exercise the right of pre-emption. This would be highly prejudicial to the interests of agriculture. Large areas of lands will pass hands by transfer and the question is whether all agricultural operations should remain in abeyance for two months. I hope, Sir, the House will realise what two months in agricultural season may mean; it will mean that if lands are not cultivated in proper time, the whole year's crop will fail. It would be very hard for the purchaser if he has to stay his hands for two months which

may cause him the loss of the whole year's income, because the landlord may come and exercise his right of pre-emption after two months. I appeal to Government and if they have any sense of justice and if they are as equally solicitous of protecting the interest of the tenants as they certainly are for the interests of the landlords, they ought to consider the justice of the case. A case of justice has been made out in favour of the tenants. You may give the landlord as much as you like but do not give him anything which the law does not entitle him. Give him 20 per cent. salami, give him pre-emption, but do not in the interest of the country as a whole interfere with the normal agricultural operations. If this House will accept this amendment it would avoid many instances of unjustifiable loss to the purchasers. If the power is given to the court to readjust the equities of the parties by taking into consideration the actual expenditure it will not mean any hardship to the purchaser. With these words I support the amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: We oppose this amendment. We have do doubt that Khan Bahadur Maulvi Azizul Haque and his friends think that it will be very beneficial to the tenants, but in fact it will be the worst possible thing for them. It will prolong litigation for months and although it looks very well on paper it will be a cruel kindness for the tenants.

The motion of Babu Nagendra Narayan Roy was then put and a division taken with the following result:—

AYES.

Aizal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Nausher.
Atiquilah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Mzulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Sattar, Khan Sahib Abdus.
Sulaiman, Maulvi Muhammad.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Banerjea, Mr. A. C.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Forrester, Mr. J. Campbell.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Gilchrist, Mr. R. N.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Khan, Babu Debendra Lal.
Lala, Babu Sarada Kripa.
Laha, Mr. N. R.

Starr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Provash Chunder.
Momin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Reid, Mr. R. N.
Roy, Mr. Bijoy Prasad Singh.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 18 and the Noes 40, the motion was lost.

Maulvi SYED NAUSHER ALI: I beg to move that in clause 23 in the proposed section 26F (*3*), line 3, for the words "and state" the words "and to state" be substituted, and in line 13, for the words beginning with "not exceeding 12½ per cent. per annum" up to the end of the said sub-section, the following be substituted, namely: "and costs to be determined by the court provided that the interest awarded under this section shall not be less than 25 per cent. of such amount."

Sir, I do not think that I need waste the time of the Council by making a speech. So I formally move the amendment.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I beg to oppose this amendment: 25 per cent. is unusually high.

The motion of Maulvi Syed Nausher Ali was then put and lost.

The following motions were called but not moved:—

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR RAHMAN to move that in clause 23 in the proposed section 26F (*3*), lines 8 and 9, for the words "applicant" and "co-applicant", the words "plaintiff" and "co-plaintiff" respectively be substituted.

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in clause 23, in the proposed section 26F (*3*)—

(*i*) in lines 12 and 13, for the words "together with" the word "and" be substituted; and

(*ii*) in line 13, after the word "interest" the following be added, namely: "thereon and on the amount of the consideration money."

Khan Bahadur Maulvi EKRAMUL HUQ: I beg to move that in clause 23, in the proposed section 26F (*3*), last line, after the word "annulled" the following be added, namely: "together with the actual costs incurred by the transferee in answering the notice from the court."

Sir, in moving this amendment I beg to bring this to the notice of the House that by accepting the amendment you will be doing justice to the person who has purchased a land and whom the zamindar wants to eject by giving him only that much of the expense which he has incurred in attending the notice served on him. I hope the Hon'ble Member in charge will see his way to accept it.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I beg to oppose this amendment for the simple reason that it is unnecessary. The Court will, as usual, award costs according to the result of the proceedings. Moreover, the way in which the whole thing has been drafted seems to be absurd. First of all, what does the word "actual" in actual costs mean? Will the Court go into the question of determining what costs have been incurred by the transferee in 'bus hire, railway fare, etc.? That is one reason for objecting to this amendment. The costs will be awarded by the Court in the usual course.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, may I rise on a point of information? In view of the fact that Government consider that the cost will be awarded by the Court, is there any harm if any such provision is incorporated in the particular section? Otherwise there might be complications.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I have already explained that it is unnecessary.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I am putting a question. In proceedings under section 105 no costs are awarded.

Rai MAHENDRA NATH GUPTA Bahadur: Well, Sir, so far as I know, if the matter goes to Court, costs are awarded.

On the motion being put, Khan Bahadur Maulvi Ekramul Huq demanded a division without rising in his place.

Mr. PRESIDENT: Khan Bahadur, if you call for a division, you must rise in your place. Otherwise I shall not take any notice of it.

The member thereupon rose in his place. A division was taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Naseher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Roy, Babu Nagendra Narayan.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Premotha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Bose, Mr. S. C.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Farrester, Mr. J. Campbell.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Khan, Babu Debendra Lal.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Martin, Mr. G. S.
McCluskie, Mr. E. T.
Mittar, the Hon'ble Sir Provash Chunder.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 15 and the Noes 66, the motion was lost.

The following amendment was called but not moved:—

Maulvi SHAMSUR RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 23, in the proposed section 26F (*4*) (*a*)—

(*a*) in line 1 for the words "an application" the words "a suit,"

(*b*) in line 7 for the word "application" the word "suit", and

(*c*) in lines 9 and 10 for the word "applied" in the two places where it occurs the word "sued" be substituted.

Mr. PRESIDENT: I propose to have one discussion on Nos. 683, 684 and 685.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, may I rise on a point of order? I submit that Nos. 683 and 691 do not rise, because they refer to a preceding clause on which my friend Maulvi Syed Nausher Ali's amendment proposing one month's notice failed. In consequence of that failure all the subsequent amendments fall through.

Mr. PRESIDENT: I think you are right, Khan Bahadur.

The following amendment fell through:—

Maulvi SYED NAUSHER ALI to move that in clause 23 in sub-section 4 (*a*) of the proposed section 36F, lines 5 and 6, for the words "two months" the words "one month" be substituted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I move that in clause 23, in the proposed section 26F (*4*) (*a*), line 6, after the words "referred to in that sub-section" the words "or within one month of the application whichever is later" be inserted.

Sir, the reason for this amendment is that as notices may not be served on the same date upon all the co-sharer landlords at different places and it may so happen that if an application by one co-sharer is filed just before the close of the period of two months, other co-sharers who may want to join in the application may become time-barred by that time.

The following motion was called but not moved:—

"**Mr. SATYENDRA CHANDRA GHOSH MAULIK** to move that in clause 23 in the proposed section 26F (*4*) (*a*), lines 9 and 10, after the words 'who has not applied under sub-section (*1*)' the words 'or within one month of application whichever is later' be inserted."

Mr. F. A. SACHSE: Sir, we do not like to extend the time for these pre-emption proceedings, but I think it is necessary to accept this amendment. The idea is that a landlord can wait for 60 days before filing the application for transfer. If he waits till the 59th day, it will be impossible for the other co-sharers to join him. So we accept the amendment.

The motion of Maharaja Sashi Kanta Acharjya Chaudhuri was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjea, Babu Promotha Nath.
Basu, Babu Basi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Bose, Mr. S. C.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakrabortty, Babu Jatindra Nath.
Chatterjea, Srijut Bijay Kumar.

Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Forrester, Mr. J. Campbell.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Gilchrist, Mr. R. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Khan, Babu Debendra Lal.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Provash Chunder.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Nem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Raid, Mr. R. N.
Roy, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Roy, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Chaudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sattar, Khan Sahib Abdus.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Kasiruddin.
Haque, Khan Bahadur Maulvi Azizul.
Khan Chaudhuri, Mr. M. Ashraf Ali.

The Ayes being 63 and the Noes 4, the following motion was carried:—

"That in clause 23, in the proposed section 26F (*4*) (*a*), line 6, after the words 'referred to in that sub-section' the words 'or within one month of the application whichever is later' be inserted."

Mr. PRESIDENT: I am very sorry to notice that members on this side of the House (left) who cried "No," and who by the weight of their voice led me to think that the "Noes" had it, did not actually vote on the "Noes" side. I hope that in future they will not mislead me in this way and thereby waste the time of the Council by compelling the other side to call for a division.

Maulvi SYED NAUSHER ALI: On a point of order, Sir. Most of the members on this side of the House did not cry "No" and so they did not vote.

Mr. PRESIDENT: That is not a point of order. You should not waste the time of the Council in this way.

Maulvi SYED NAUSHER ALI: I submit, Sir.....

Mr. PRESIDENT: Is it a point of order?

Maulvi SYED NAUSHER ALI: Yes, Sir.

Mr. PRESIDENT: Are you sure that you will be able to make out a point of order?

Maulvi SYED NAUSHER ALI: How can I say that?

Mr. PRESIDENT: Do not make an attempt when you are not sure of your point. (Laughter.)

Maulvi SYED NAUSHER ALI: But, Sir, may I not rise on a point of order? For myself, I am quite sure of my point of order.

Mr. PRESIDENT: What is it?

Maulvi SYED NAUSHER ALI: I submit that the members on this side of the House who did not vote never cried "No."

Mr. PRESIDENT: That is not a point of order and, in fact, most of them did cry out "No."

The following motion was called but not moved:—

Srijut NAGENDRA NATH SEN and MAULVI SHAMSUR-RAHMAN to move that in clause 23 in the proposed section 26F (*4*) (*b*), line 1, for the word "co-application" the word "co-plaintiff" and in line 6 for the word "application" the word "suit" be substituted.

Mr. PRESIDENT: I propose to have one discussion on motions Nos. 688 to 691.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: Sir, I beg to move that in clause 23, in the proposed section 26F (*4*) (*b*), lines 3 and 4, the following words be omitted: "not extending beyond the period of two months referred to in sub-section (*1*)."

This is consequential on the amendment which has just been accepted.

The following motion was called but not moved:—

Maulvi SYED NAUSHER ALI to move that in clause 23, in sub-section (*4*) (*b*) of the proposed section 26F, line 4, for the words "two months" the words "one month" be substituted.

The motion of Maharaja Shashi Kanta Acharjya Chaudhuri was then put and lost.

The following motion was called but not moved:—

Maulvi ABUL KASEM to move that in section 26F (*4*) (*b*), line 4, the words "referred to in sub-section (*1*)" be omitted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: Sir, I beg to move that in clause 23, in the proposed section 26F (*4*) (*b*), line 5, after the word "applicant" the words "other than the co-sharer landlord transferee, if any" be inserted.

My reason for moving this amendment is that the co-sharer landlord transferee has already paid the transfer fee and other costs. Why should he pay again.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I beg to oppose the amendment. The court has discretion and the court may be trusted to use its discretion properly. There is no point in the transferee landlord disputing the matter again.

The motion of Maharaja Shashi Kanta Acharjya Chaudhuri was then put and lost.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order, Sir. Is it not desirable that the mover of the amendment should call out "Aye"?

Mr. PRESIDENT: Well, when the mover has moved the amendment, it goes without saying that he is for it, so long he does not withdraw it.

Khan Bahadur Maulvi AZIZUL HAQUE: I submit it is an abuse of his privilege if he does not call out "Aye."

Mr. PRESIDENT: In the present case, at any rate, your charge appears to be frivolous.

The following motions were called but not moved:—

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in clause 23, after the proposed section 26F (*4*), the following be added namely: "(*c*) It will be open to the landlord to show that the consideration money is something other than what is stated in the instrument of transfer."

Rai HARENDRANATH CHAUDHURI to move that in clause 23, after sub-section (*4*) of the proposed section 26F, the following sub-clauses be added:—

"(*c*) After the expiry of two months from the date of the last service of notice referred to in sub-section (*1*) the court shall fix a date for the hearing of the applications mentioned in sub-sections (*1*) and (*4*) (*a*).

(*d*) On the date so fixed the court shall make an order directing those who have applied under clause (*a*) of sub-section (*4*) to deposit such portions of the money deposited under sub-section (*2*) and of the amount required to be deposited under sub-section (*3*) as are proportionate to their respective shares in the landlord's interest in the holding."

Maulvi SHAMSUR RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 23, in the proposed section 26F (*5*), lines 5 to 7, for the words "shall make an order allowing the application and directing that the deposits shall be paid to the transferee" the following words be substituted, namely: "shall proceed with the trial of the suit and pass a decree in accordance with law and may make an order directing that the deposits shall be paid to the transferee, and may make orders as to costs."

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in clause 23 in the proposed section 26F (*5*), line 6, after the words "directing that the deposits" the words "such portion thereof as to the court seem fit" be inserted.

Mr. PRESIDENT: I propose to have one discussion on motions Nos. 702 and 703.

Mr. D. N. ROY: In the absence of Rai Harendranath Chaudhuri, I should like to move, with your permission, amendment No. 702 which stands in his name. I may say that I have been desired by him to move this amendment.

Mr. PRESIDENT: Yes, you may move it as a short-notice amendment as you have got the consent of the member who gave notice of it.

Mr. D. N. ROY: I understand Government is willing to accept this.....

Mr. PRESIDENT: Mr. Roy, the best course for you would be to move the amendment first and then begin your speech.

Mr. D. N. ROY: I move that in clause 23 at the end of the proposed section 26F (*5*), the following words be added: "or the co-sharer applicant under sub-section (*2*) as the case may be."

Sir, I understand Government will accept this if you will allow me to move it in a slightly altered form.

Mr. A. K. FAZL-UL HUQ: May we know how my friend has dived into the mind of the Hon'ble Member in charge of the Bill.

Mr. PRESIDENT: The mover might have consulted the Hon'ble Member in charge of the Bill and he would not be guilty of any crime if he had done so.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I formally move that in clause 23, in the proposed section 26F (*5*), last line, after the word "transferee" the words "or co-sharer landlord who has made the application under sub-section (*1*) as the case may be" be added.

Mr. F. A. SACHSE: There is defective wording in clause 26F (*5*). The deposits which are made under clause 4 (*b*) have nothing to do with the transferee at all. They are paid by co-sharer landlords for the benefit of the first co-sharer landlord who made the original application. So if we add at the end of this clause after the word "transferee" the words "or to such other persons as the court thinks fit," then we give the court discretion to decide as to the amount which is due to the transferee, to the co-sharer landlords, to the mortgagee, etc.

Government undertook to make some sort of change to this effect in 26F (*5*) when dealing with the proposed amendment of 26F (*2*), No. 654, where objection was raised to the landlord applicant having to deposit the whole of the consideration-money, when under section 26C (*6*) the consideration-money may include money not actually paid but only agreed to be paid to a mortgagee.

The motion was then put in the following form and Mr. D. N. Roy and Maharaja of Mymensingh having expressed no objection, the motion was put and agreed to:—

"That in clause 23 in the proposed section 26F(*5*) after the word 'deposists' in the second last line the words 'made under sub-sections 2 and 3' be inserted."

Mr. M. C. GHOSH: There has been a little mistake in the amendment as the wrong one has been put.

The Hon'ble Sir PROVASH CHUNDER MITTER: May I make a suggestion, Sir? I am afraid there has been some confusion in the handing over of the paper in which the amendment was noted. Subject to your permission, may we take it that after 10 minutes, during which we shall examine the amendment, the amendment may be put? Mr. Sachse had a draft before him and another draft was wrongly handed over to you.

Mr. A. K. FAZL-UL HUQ: On a point of order, Sir. As far as we can understand we thought that there was something very serious going on in that part of the House. The question was whether some amendment was to be passed or rejected. You have given your decision on that point that it has been passed. Now, is it open to anybody even an Executive Member of Government to go behind that order and create a scene in the House?

Mr. PRESIDENT: I quite understand your point. The difficulty has arisen in this way, Mr. Sachse, intended to move an amendment but not the one which was handed over to me by a member of Government by mistake. I think the House will agree with me that all bona fide mistakes should be corrected.

Mr. A. K. FAZL-UL HUQ: Sir, I submit that no proper notice of this amendment has been given and I submit that neither by your will nor by the intention of the Hon'ble Member such a mistake can be rectified. There are certain rules governing the procedure of the House and they must be followed.

The Hon'ble Sir PROVASH CHUNDER MITTER: There is nothing in this new amendment except a little drafting alteration. I am sure all sections of the House are anxious to have the Bill well drafted and that is why we want to put this corrected amendment a little later. In any case the Legislative Department can perhaps correct under rule 64, but I thought it were better that the mistake should be corrected here.

Mr. A. K. FAZL-UL HUQ: Sir, it is apparent that this mistake or whatever it may be makes nonsense of this provision and we respectfully pray that this nonsense should go out of the world.

Mr. PRESIDENT: Mr. Sachse, would you please explain how the difficulty arose?

Mr. F. A. SACHSE: Sir, by this amendment we want to make it clear that the court would decide the party as to whom the money

will be paid. This amendment gives the court discretionary power. The amendment which I read out was my amendment but the paper handed over to you was the older version. Mine is the better version. Both these amendments however are exactly the same in effect and intention. The question is one of drafting.

Mr. F. E. JAMES: A certain amendment was put to the House and passed. Now the Government would like to put another version of that amendment. May not Government at short notice, if you so permit, Sir, put forward that amendment amending their previous amendment to get rid of the difficulty?

Mr. PRESIDENT: So far as I am concerned I think it would be very wrong on my part to give any such ruling which will shut out every member for all time to come from correcting a pure mistake. It is not at all desirable that I should agree to create any such precedent. A slip of paper was handed over to me and I was told that it contained Mr. Sachse's amendment. I read it out and it was up to Mr. Sachse to rise in his place then and disown it. He did not do that and the presumption is that he did accept the amendment which was read out as his own. But if Mr. Sachse, in spite of that, says that it was a case of mistake, pure and simple, I think he should be given a chance to remedy the evil. If, however, the difference between the one that was carried and the one which has been handed over to me now, is very little, the amendment which the House has already passed should be left undisturbed.

Mr. F. A. SACHSE: I think the one which I read out is really preferable to the one passed by the House. It makes no difference however in effect and intention.

Mr. PRESIDENT: Have you any submission to make on this, Mr. Huq? You raised the point of order; but before you say anything, I would like to put it to you in this way: whether you do not see that it is desirable, and reasonable too, that all mistakes should be corrected.

Mr. A. K. FAZL-UL HUQ: If it is put to me in this way that whether mistakes should be rectified or not, I will certainly take up the position that mistakes should be rectified. But, Sir, this is something more than a mistake. A question was deliberately put before the House and your decision has been given on it. The question then arose whether a certain other amendment in another shape can be put forward which is inconsistent with the one which has already been passed. It is not a question of my wishes in the matter. It is a

question of the privilege of the House. There are certain rules governing the procedure of the House and my point is whether those rules should be followed or not. If you think that in allowing this amendment you are acting in conformity with the rules; then it is a matter between you and your conscience.

Maharaj Kumar SRIS CHANDRA NANDY: My suggestion is this: you have accepted the amendment at short notice; and supposing it has been accepted by the House, could you not accept this revised form as a substitute for the amendment already carried?

Mr. PRESIDENT: Mr. James' suggestion is practical, and if Mr. Sachse would act up to it, I think it would obviate unnecessary discussion.

Mr. F. A. SACHSE: I accept Mr. James' proposal, and, with the permission of the Chair, I should like to move this amendment on short notice:

"That at the end of proposed section 26F (5) the following words be added, namely: 'or to such other person as the court thinks fit.'"

Mr. A. K. FAZL-UL HUQ: On a point of order, Sir. If you allow this motion to be put on short notice and on the spur of the moment, it is not possible for us to discuss it.

Mr. PRESIDENT: I can always admit an amendment on short notice, and it is up to the members either to support or oppose it. Do you really want time to consider it?

Mr. A. K. FAZL-UL HUQ: How can I support or oppose it when the draft is still in the hands of the Hon'ble Member? We do not know what the amendment is; I have not been able to catch his words; I want a copy and then I shall decide whether I should accept it or not.

Khan Bahadur Maulvi AZIZUL HAQUE: Further there is a mistake, and it is this: the House has accepted a certain amendment, and the proper thing would be that that amendment ought to be deleted and the one now suggested by Mr. Sachse should be substituted in its stead.

Mr. PRESIDENT: You are not right: Mr. Sachse must move a fresh amendment which should so modify the previous one as will have the effect of correcting the mistake complained of.

The Hon'ble Sir PROVASH CHUNDER MITTER: May I make a suggestion? I do not want that my friend, Mr. Fazl-ul Huq, should have any legitimate grievance. Subject to your decision, we are quite prepared to proceed with the other amendments giving Mr. Fazl-ul Huq ten minutes' time to consider this proposal.

Mr. PRESIDENT: If Mr. Fazl-ul Huq is not ready, I may give him ten minutes' time; but is the amendment ready at all?

Mr. A. K. FAZL-UL HUQ: Then the position will be that when I shall be reading this amendment, the House will be discussing something else; I have serious objection to that. I put a counter-proposal: let Mr. Sachse make his speech while I shall be reading his amendment.

Mr. M. C. GHOSH: The amendment that was put before the House was No. 702, namely, to add at the end of the proposed section 26F(*5*), after the word "transferee," the words "or the co-sharer applicant under sub-section (*2*) as the case may be." It was put to us by some learned lawyers that the co-sharer applicant is not the only person who might be entitled to get a share of the deposit, for instance, the man who has lent money on mortgage of the holding, he might be entitled to get some share, and to provide for all such cases these words have been altered to "or to such other person as the court thinks fit." That is all the alteration.

Khan Bahadur Maulvi AZIZUL HAQUE: Mr. Sachse and the Hon'ble the Revenue Member will see that if this amendment be carried, the section will read thus: if the deposits required under sub-section (*2*) or clause (*b*) of sub-section (*4*), as the case may be, and under sub-section (*3*) are made within the period fixed by the court, the court shall make an order allowing the application and directing that the deposits shall be paid to the transferee or to such other person as the court thinks fit. But the other phrase has already been carried; so the proper thing will be that first the other thing should be deleted and then this new thing substituted in its stead.

Mr. A. K. FAZL-UL HUQ: I think the suggestion of Khan Bahadur Azizul Haque is a very reasonable one. I have no objection to Mr. Sachse's amendment, because that seems to be a real improvement upon the one that has been carried. The suggestion made by Khan Bahadur Maulvi Azizul Haque really solves the difficulty. We have carried an amendment to the effect that the money should be paid to the co-sharer applicant. The Khan Bahadur suggests that the money should be paid as the court thinks fit leaving a very wide

discretion to the court as to whom the court might think it necessary to pay. This amendment does not encroach on the one passed and at the same time it gives the court discretion to pay the money to whomever it thinks proper.

Mr. F. A. SACHSE: The amendment that I want to move will be in substitution of the previous one and not in addition.

Mr. PRESIDENT: I am afraid you must move one in addition.

Mr. F. A. SACHSE: Then the amendment will have to be redrafted once again.

Mr. PRESIDENT: Yes, that will be the right thing to do.

The Hon'ble Mr. A. MARR: May I suggest that the Hon'ble Sir Provash Chunder Mitter's proposal be adopted and we go on with the other amendments in the meantime.

Mr. PRESIDENT: I find that Government will take some time to draft their amendment. So the best thing will be to go over to the next item. In the meantime Mr. Sachse should be able to find a way out of the difficulty. He may draw up his new amendment and give Mr. Huq and others an opportunity to see it before he actually moves it.

The following amendments were called but not moved:—

Rai HARENDRANATH CHAUDHURI to move that in clause 23 in the proposed section 26F (*6*) (*i*), lines 3 and 4, the following words be omitted: "subject to the provisions of section 22."

Babu AMULYA CHANDRA DATTA to move that in clause 23, in the proposed section 26F (*6*) (*i*), for the words "the immediate landlord and co-sharer immediate landlord" the words "the pre-emptor" be inserted.

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR-RAHMAN to move that in clause 23, in the proposed section 26F (*6*) (*i*), lines 6 and 7, for the words "application has been allowed," the words "suit has been decreed" be substituted.

Babu AMULYA CHANDRA DATTA to move that in clause 23, in the proposed section 26F (*b*) (*iii*), for the words "such landlord or co-sharer immediate landlord" the words "the pre-emptor" be inserted.

Khan Bahadur Maulvi AZIZUL HAQUE: I move that in clause 23, after the proposed section 26F (7), the following be added, namely: "(8) Nothing in this section shall take away the right of pre-emption conferred on any person by the Muhammadan Law."

This is a very important matter, and I hope all those who have so long vindicated the existence of the present rights will kindly see that by the Government Bill, you are going to take away the right of pre-emption which is enjoyed by every Muhammadan in the Presidency of Bengal. I do not see any reason, any justification as to why you are taking this right away. That right was in existence ever since the British came into this country and had been exercised as a matter of equity and good conscience. Not a word has been said in any Government document, not a sentence has been put forward as to the reason why the present right of the Muhammadan community should be taken away without any compensation, to quote the language of some of my friends. Most of us, the Muhammdaans, feel that it is a very justifiable right which the Muhammadans have, and I do not know why the Muhammadans should be deprived of it. Government has not given any explanation as to why this right should be taken away. Already we have discussed the questions of Waqf and Heba and other things, and I do not see any reason as to why this right should be taken away. So far as the Muhammadan law is concerned, I may inform the House that though the Muhammadan law has provided this right, it has kept it within a reasonable limit, namely, that as soon as the co-sharer Muhammadan knows that a particular portion of the plot is sold, he comes in and wants to exercise his right of pre-emption. For these reasons, unlike the modern jurists, the jurists of the Islamic age considered that this is a right which should only be applicable in cases where a man is really inconvenienced; and in order to find out as to whether he is really inconvenienced the best thing would be not to give any time for deliberation or time to find out whether a particular man is desirable or undesirable. The law says that he must immediately make his demand. That being the position, when the British came to this country, Government, with respect to the Muhammadans, followed the principles of the Muhammadan law in the matter of pre-emption. In United Provinces and portions of Bihar it is not only applicable to the Muhammadans but also to the Hindus. But so far as Bengal is concerned, it is applicable only to the Mussalmans. The High Court in Calcutta have also given their ruling to the same effect. I do not see any reason or justification why this right should be taken away.....

Dr. BIDHAN CHANDRA ROY: May I ask the member how he thinks that this right is going to be taken away?

Khan Bahadur Maulvi AZIZUL HAQUE: It will be in this way: Supposing one co-sharer sells his share of the holding to a third person

and at that very moment another co-sharer who, under the existing law has the right of pre-emption wants to exercise his right, the right which accrued to him the very moment he purchased the land: you do not make any mention of that right in the present Bill; this legislation, I submit, will take precedence, namely, that the landlord has got the right over the man who was the actual co-sharer and had also the right, and there will be conflict of laws. In that view I consider a mischief is going to be done and I hope Government will be pleased to accept my amendment.

Maulvi NURUL HUQ CHAUDHURI: I support the amendment moved by Khan Bahadur Maulvi Azizul Haque. It is a matter of very great importance to us whether we shall be allowed to retain our personal laws as we have been allowed so long. It is a right which is appreciated not simply by the Muhammadans but by the Hindus of this country as well. I am not exaggerating when I say that the whole foundation of the British Empire rests upon this toleration of the rights and religious laws of the different communities. I do not blame the Government because I believe that the Government must have in a fit of absentmindedness adopted this provision; otherwise I am quite sure that the Government of Bengal in the year 1928 should not have forgotten the pledges given by the British Government that the rights of the communities in respect of their personal laws should not be so lightly taken away.

6-15 p.m.

Sir, I ask the hon'ble members of the House, who are non-Muhammadans, not to trample upon the rights which, we, Muhammadans, value so much. I ask them to consider what will be the effect if we, the two communities, carry on in this manner an insidious war against each other's laws. The right of pre-emption, Sir, is not a mere technical right; it is a right which is founded upon justice and equity; it is a right which preserves the peace of the society and the peace of the household; it is a right which, under the Muhammadan law, entitles Muhammadans not to admit strangers into their own homestead lands or in their immediate neighbourhood. We know the result which the intrusion of strangers may have upon the household peace of the family. If the family possess a common homestead land, it is open to one of the co-sharers to sell his land to a stranger, but the Muhammadan law comes in and the remaining co-sharers have the right to say: "You must not sell it to a stranger." If it is sold to a stranger, the Muhammadan law forces the stranger to surrender the land to the other co-sharers. This right is also recognised as a principle of equity in the law of partition. We stand not upon mere technicalities; we stand upon the broad principles of

justice and equity; we stand upon the pledge that the British Government have given to us; and we stand upon the expectation which everyone of us—Hindus and Muhammadans— living in this land have, of mutual toleration and good-will. Sir, I would warn the members of this house not to trifle with religious laws of each other. I would beseech this House not to trample upon the religious susceptibilities of any community. I would call upon non-Muhammadan members to take note of this warning. With these words, I support the amendment.

Mr. M. C. GHOSH: Sir, on behalf of Government, may I point out that the learned mover of this amendment as well as the gentleman who has just supported it have made a mistake in this matter. The Bengal Tenancy Act does not in any way affect the Muhammadan law. Khan Bahadur Maulvi Azizul Haque thinks that this section will take away the right of pre-emption conferred on any person by the Muhammadan law. I think it will not do so. The Bengal Tenancy Act does not touch the Muhammadan law. The Muhammadan law, as it is, will still remain intact. Under the Muhammadan law, various persons have a right of pre-emption as has been pointed out, and all their rights will remain. The landlord's right only comes in after the transfer has been made. Under the Muhammadan law, the right of pre-emption has to be immediately claimed—in fact, the person has to jump in and claim it immediately. When, therefore, a person wants to sell, a co-sharer will immediately pre-empt and claim his right even before the landlord comes in to have pre-emption. The landlord's pre-emption is, in fact, post-emption. The right of pre-emption is in no way affected. I, therefore, hope that the learned mover will think over the matter.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I rise on a point of information. I have not been able to follow what Mr. Ghosh has said. Am I to understand that, when a plot of land, in which a Muhammadan has a right of pre-emption is sold, that Muhammadan has the right to pre-empt so far as that particular plot is concerned and he immediately exercises his right of pre-emption and, let us take it, that he gets the land; prima facie will not the landlord get his right of pre-emption?

Mr. M. C. GHOSH: That will depend on the position of circumstances. The landlord will be the purchaser in place of the stranger who has purchased the land. There is, however, another section where it is laid down that the landlord may not pre-empt.

Maulvi NURUL HUQ CHAUDHURI: I hope, Sir, the matter will be cleared up. The matter seems to be.....

Mr. PRESIDENT: If you mean to speak on the amendment for the second time, I cannot allow you to proceed any further.

Mr. JOGESH CHANDRA GUPTA: Sir, I think my friend, Khan Bahadur Maulvi Azizul Haque has imagined that in this case there is a violation of Muhammadan law when there is no reason to think so. As Mr. M. C. Ghosh has explained on behalf of Government, this section of pre-emption law does not touch the personal right of the Muhammadan to pre-empt where it exists. Section 26F (*a*) runs thus: "Except in the case of a transfer to a co-sharer in the tenancy whose existing interests has accrued." Now, that saves the co-sharers who have the right to pre-empt. Of course, besides the co-sharers it may be said that there are others who may also pre-empt. But what is provided here in this Tenancy Bill is that the landlord after he gets notice of the transfer will have the right to pre-empt. Until the notice of transfer is received, the landlord's right will not accrue; and therefore whenever a Muhammadan co-sharer or a neighbour pre-empts a land, the landlord will come in after the pre-emption is complete and when notice is given to him. I think the point is quite clear. The personal right of pre-emption has been restricted by decisions, and my friends to the right know very well that after the 10 Calcutta decisions it has become almost an impossibility. Therefore, I say that in every case where there is a personal right of a Muhammadan to pre-empt, that right is not taken away and that right can be exercised. It has been said that the right to repurchase will accrue to the landlord in preference to the one who has a personal right of pre-emption. If it were so stated anywhere in the Act, then there could have been some reason for apprehension that this section will take away the right.

The next thing that has got to be considered is that when the landlord wants to pre-empt after a co-sharer tenant has purchased it, he cannot do it. But if a stranger has purchased, then the landlord can pre-empt. I hope I have made the two points quite clear. You have to pre-empt before notice is issued to the landlord and there is no doubt on that point. Therefore, I do not think that there is anything in this provision of the Tenancy Act which might make my friends apprehensive of anything. I think, however, that the Government benches might also consider whether this amendment affects the Bill in any way. To my mind, there seems to be no difficulty in accepting this amendment if that would allay the apprehension of my friends to the right.

Babu AKHIL CHANDRA DATTA: Sir, I am not speaking now, either in support of or against the amendment. I would only draw the attention of the hon'ble mover to this point: Supposing this amendment is carried, I do not think it will achieve the result that is desired,

for this reason that it only says: "Nothing in this section shall take away the right of pre-emption conferred on any person by the Muhammadan Law." Very well, if a person under the Muhammadan Law is entitled to pre-emption, he will be at liberty to exercise this right: the Tenancy Act does not take away that right. But let us consider what will be the position after his purchase under the rights of pre-emption. Now what is this right of pre-emption? It is the preferential right of purchasing. A Muhammadan under the law of pre-emption will exercise the right, and will purchase the land. But there is a transfer all the same under the Bengal Tenancy Act and the inevitable result of that transfer will be that after this transfer the landlord may come in as the law stands. Therefore, it appears to me that this amendment will not solve the difficulty. Of course I must say, as Mr. M. C. Ghosh has made is perfectly clear, that the Muhammadan Law is not touched: all the same the difficulty I have pointed out remains.

Mr. B. E. J. BURGE: Sir, may I just try to make this point clear, although Mr. Gupta and Akhil Babu have made it fully clear. The amendment clearly does nothing, and even if it is carried, it will not effect anything. If the amendment had been worded thus: "Nothing in this section shall allow a landlord to pre-empt after pre-emption has been exercised under the Muhammadan Law," then you would get something: otherwise in its present form it means nothing. What you want is a different amendment. The pre-emption of the landlord in this case, as Akhil Babu has explained, is the second pre-emption, which is in the statutory law and nothing in the amendment proposed will take it away.

Mr. A. K. FAZL-UL HUQ: Sir, may I rise on a point of order? Certainly as it appears that the amendment of which notice has been given by Khan Bahadur Maulvi Azizul Haque does not meet the requirements of the case, will the Government be pleased to draft an amendment on short notice and place it before the House? In the meanwhile I would ask you, Sir, to postpone this matter.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I made a suggestion previously, and I spoke previously to Khan Bahadur Azizul Haque, Mr. Fazl-ul Huq, Khan Bahadur Emaduddin Ahmed and other Muhammadan friends, that I was very anxious to discuss with them questions affecting the personal law of Muhammadans. But perhaps for want of time, or for other unavoidable reasons they could not keep the engagement which they made for a meeting on Sunday last. Another engagement also they could not keep. I am extremely anxious to have the full and considered view of my Muhammadan friends on all questions touching Muhammadan law, and, therefore,

I am quite agreeable to the consideration of this matter being postponed, if my Muhammadan friends will make an engagement for discussing these matters and keep it.

Mr. PRESIDENT: Do you want to postpone the consideration of this matter, Sir Provash?

The Hon'ble Sir PROVASH CHUNDER MITTER: Yes, on condition that my friends make an engagement and keep it. If my friends give me that assurance I am willing to postpone it.

Mr. PRESIDENT: It is for them to accept your suggestion or not (Cries of "Yes," "Yes"). I find that it is the pleasure of the House that the discussion of this amendment should be postponed and so I will put it off to a day which the parties concerned may hereafter fix with my consent.

Mr. F. A. SACHSE: Sir, I beg to move the following short-notice amendment, namely, that in clause 23, in sub-section (5) of the proposed section 26F, as amended by the Council, the following shall be added: "or to such other persons as the court thinks fit."

Maulvi NURUL HUQ CHAUDHURI: On a point of order, Sir. Can we go back on an amendment which has already been accepted by the House?

Mr. PRESIDENT: It is not going back on the decision of the House, but it is only giving effect to the decision of the House.

The motion was put and agreed to.

Adjournment.

The Council was then adjourned till 2-45 p.m. on Thursday, the 30th August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Thursday, the 30th August, 1928 at 2-45 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh), in the Chair, the Hon'ble Mr. A. Marr, the Hon'ble Sir Provash Chunder Mitter, KT., C.I.E., the Hon'ble Mr. W. D. R. Prentice, C.I.E., and 99 nominated and elected members.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was resumed.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I beg to move that in clause 23, after the proposed section 26F (7), the following sub-section be added, namely: "(8) Nothing in this section shall affect the right of any co-sharer landlord whose name has been omitted owing to the neglect or default of the transferrer or transferee."

The reasons for moving this amendment are to make the position clear.

Rai MAHENDRA NATH GUPTA Bahadur: I beg to oppose this amendment. It is directly against the clear intention of the sections on pre-emption. This intention is that two months should be the maximum time within which a landlord must exercise his right. If a co-sharer landlord be permitted to come at any time after years on this plea or that and claim pre-emption who will care to buy a raiyat's land or risk his money? Again if a fear like this be constantly hanging over his head it will mean interminable suspense with all the serious difficulties in its tail about which I have already spoken, purchasers will be shy, the raiyat will not get the full market value and the landlord will not get the full salami, and cultivation will be held is suspense for an indefinite period. Other serious objections will also arise. For the possible benefit of a few sleeping co-sharer landlords who do not care to keep any information about their property,

serious harm will be done to many—both landlords and tenants—and to the community as a whole. As a result the chances of this rule of pre-emption will be very seriously jeopardised. For single landlords too it will react, and the raiyats will never get the full value of their lands and they themselves will never get the full salami. The crux of the whole scheme is the limitation of the period to two months from the service of notice and the amendment wants to do away with it; I therefore oppose the amendment.

The motion of Maharaja Shashi Kanta Acharjya Chaudhuri, of Muktagacha, was then put and lost.

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Maulvi Syed Nauhser Ali I beg to move that in clause 23, after the proposed section 26F (7), the following sub-section be added, namely: "(8) The decision of the court under this section shall be final and no appeal shall lie therefrom."

Mr. M. C. GHOSE: I beg to oppose it and I will explain why I do so. The hon'ble members are aware that the right of appeal under the law is only conferred when the Statute expressly confers it. There is no general right of appeal under any law; the right of appeal can only be conferred by the Statute. Therefore the addition proposed is quite redundant and unnecessary.

The motion was then put and lost.

The following motions were called but not moved:—

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 23 for proposed section 26F the following shall be substituted, namely:—

"26F. If on receipt of the notice of transfer and the landlords' transfer fee as mentioned in section 26C (3) the landlord has reasons to believe that the amount of consideration money has been understated in the instrument of transfer with a view to reduce the amount of the landlord's transfer fee, the landlord may within two months of the receipt of such notice institute a suit in the proper court against the transferee for recovery of the balance of transfer fee after deducting the amount already received by him and the landlord will be entitled to a decree for such balance as may be found due on proof that the amount actually paid by the transferee as consideration has not been mentioned in the instrument of transfer."

Maulvi KADER BAKSH to move that in clause 23, for the proposed section 26F, the following shall be substituted, namely:—

"26F. If on receipt of the notice of transfer and the landlord's transfer fee as mentioned in section 26C (3), the landlord has reasonable grounds

to suspect that the amount if the consideration money has been understated in the instrument of transfer with the evident object of causing loss to the landlord with regard to his transfer fee, the landlord may, within two months of the receipt of such notice, institute a suit or proceeding in the proper court for the ascertainment and recovery of the proper transfer fee after deducting the amount if any, that might have been deposited by the transferee to the credit of the landlord or received by the landlord already and the landlord will be entitled to a decree for such balance as may be found due."

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 23, after the proposed section 26F, the following shall be inserted, namely:—

26F. (*1*) Except in the case of a transfer—

(*a*) in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the holding or dues recoverable as such,

(*b*) by exchange,

(*c*) referred to in the second proviso to section 26D the immediate landlord of the holding or the transferred portion or share may within two months of the service of notice issued under section 26C or 26E, apply to the court that the transfer shall be declared inoperative against him on any of the following grounds—

(*i*) that the transferee is not a cultivating raiyat and is not acquiring the land for the purpose of his own cultivation;

(*ii*) that the transferee is a habitual defaulter of rent or a person to whom for any other cause transfer should not be allowed: provided that if the transferee furnishes security for the payment of rent he cannot be disqualified under the clause of habitual defaulter;

(*iii*) that the transfer results in the creation of unreasonably small holdings.

(*2*) If the court is satisfied that the landlord has made out a good and sufficient case under any of the clauses of sub-section (*1*) it shall make a declaration that the transfer is inoperative against the landlord.

(*3*) When the declaration is made under sub-section (*2*) the court shall cause the landlord's transfer fee to be refunded to the transferee.

The following amendment fell through:—

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that necessary and consequential changes shall be made in other clauses of the Bill.

Mr. A. K. FAZL-UL HUQ: I beg to move that in clause 23, the proposed section 26G be omitted.

Mr. F. A. SACHSE: This provision about complete usufructuary mortgages is entirely for the benefit of the bona fide cultivator. How often does a raiyat not give up possession of one or more plots of his land in return for a petty loan? At the end of 5 years or 10 years the capital is still unpaid and the raiyat has to see his land go out of his possession for ever. It would be far better if he sold a small area rightaway instead of mortgaging a larger area for a long period and then seeing it sold away. If this provision is accepted, no mahajan can keep a raiyat out of his land for more than 15 years at the most. At the end of that period he must give it back as the whole capital and also the interest will have been paid off. The provision is also for the benefit of the landlord, because it will mean that the mahajan except for a small loan will not be willing to take a usufructuary mortgage instead of buying the land straightaway. Therefore there is less chance of the landlord being deprived of his salami by mortgages taking the place of sales to a large extent.

Mr. A. K. FAZL-UL HUQ: I did not make any speech because I wanted to know what reasons the Government or anybody else have to oppose this proposal.

Khan Bahadur MUHAMMAD ABDUL MUMIN: On a point of order. He has got no right of reply.

Mr. PRESIDENT: Mr. Huq, you have really got no right of reply and I think you should have spoken when you moved your amendment.

The motion of Mr. A. K. Fazl-ul Huq was then put and lost.

Maulvi ASIMUDDIN AHAMAD: I beg to move that in clause 23, in the proposed section 26 G (*1*), last two lines, for the words "fifteen years" the words "twenty years" be substituted.

He spoke in Bengali in support of his motion, the English translation of which is as follows:—

"Sir, none but the poor tenants bind their lands under usufructuary mortgage in order either to buy agricultural produce or to pay off the dues of doctors or money-lenders. At present there is no time-limit for usufructuary mortgage. If their hands are tied up by the Bill by reducing the period for which they may mortgage their lands to fifteen years, the result will be fatal to them. At present they can get a good sum of money by mortgaging a small plot of land for a long period. This advantage they will lose, should the Bill be passed, and they will have to mortgage large plots of land for long periods

in order to obtain the necessary amount of money. In this way, much of their land will pass into the hands of money-lenders because they will find it difficult to release these lands from the money-lenders and regain possession over them. I believe, therefore, that nobody will have any objection to increasing the time-limit by 5 years."

Mr. A. K. FAZL-UL HUQ: The reasons that I was going to give for the deletion of this clause will apply in support of this amendment also. As my friend has pointed out, when the raiyat goes to borrow money there is a sort of haggling between him and the mahajan. If he wants a large sum of money and the term is a short one, he has got to pledge a larger holding than he would have to do if the term were a longer one. Therefore it seems to me that the right of the tenant to borrow money freely in the market is being limited by the short term as provided in the Bill. It is seldom that we see that this money is repaid within the short term of 10 or 15 years. Therefore we should not, by limiting the period to 15 years, take away the right which tenants possess to borrow freely. It will be fair to increase the term from 15 to 20 years; it will give the raiyat more facilities than if, by Statute, he is prevented from mortgaging his land for not more than 15 years. Supposing he requires a certain sum of money; the mahajan might not think that the extent of the holding which he is going to pledge would be sufficient security or sufficiently tempting an offer to him to hold the land for 15 years in order to advance the money the tenant requires. Secondly, the term of payment affects also the rate of interest and if it is spread over a larger term the mahajan might be induced to lend the money at a lesser rate of interest. Considering all the points of view I think it is certainly very reasonable to extend the term by at least 5 years. There is no magic in the term 15 years; let it be 20 years. In other words if there is to be lititation at all, let it be for a longer term than 15 years.

Maulvi NURUL HUQ CHAUDHURI: I rise to support the amendment. Sir, I am against any limitation of the right of the tenant, but, if I have to chose between the two terms of 15 and 20 years I would certainly prefer the latter and for this reason that we have already given the raiyats full freedom to transfer their holdings either in entirety or in part. Having conceded that right to the tenant it would be futile to enact that he should not be entrusted with the right of mortgaging his holding beyond the period of 15 years only. To my mind the real object of this section seems to be that the tenants should be compelled to sell their holdings as often as possible in order that you can place the largest amount of money in the pockets of the zamindars. Against a proposition of this nature we on this side of the House emphatically protest. It should not be the object of the law to look to the interests of the landholders only but to those of

the tenants also. (Interruption.) I do not think, Sir, my friends are justified in interrupting me but it has been a habit with them to constantly interrupt the members of this side of the House. But I say to them we may lose to-day, we may lose to-morrow, but at any rate we have the country at our back and the Swarajist will surely experience the bitter consequences of their action and attitude on this Bill. Sir, I emphatically protest against the curtailment of the freedom we have given the tenants to transfer their holdings. They have purchased the freedom at a heavy cost and it should be our duty not to curtail their freedom. I submit, Sir, that 20 years should be the statutory period instead of 15 as provided in the Bill.

Mr. F. A. SACHSE: This provision is already in the Act as regards Santhal tenants. In the area where it has been in force, it has worked very satisfactorily. Sir John Kerr's Committee proposed a period of 9 years; the Select Committee extended the period to 15 years for the very reasons which have been advanced by the speakers here; they were afraid that the raiyat would not be able to obtain sufficient money to pay off his urgent necessities if he were only allowed to give the land for 9 years. They thought 15 years was long enough. Twenty years is obviously too long for a man to be out of possession of his land. Ordinarily in the long run it is to the advantage of the tenant to sell a small portion of his holding outright rather than to give an usufructuary mortgage of a larger portion for a period of 20 years. In the latter case it is not likely that the produce of the remaining land will be sufficient to pay off the capital and interest of his debt.

The motion of Maulvi Asimuddin Ahamad was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Mr. A. K. Fazl-ul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Rahman, Maulvi Azizur.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Mr. A. C.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Cohen, Mr. D. J.
Dash, Mr. A. J.

Dutt, Babu Sarat Kumar.
Faroqui, Khan Bahadur K. G. M.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Gilchrist, Mr. R. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. S. P.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Pravash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sarker, Babu Nalinirenjan.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 15 and the Noes 53 the motion was lost.

The following amendment was called but not moved:—

Srijut BIJAY KUMAR CHATTERJEE to move that in clause 23 the proposed section 26G (*4*), clause (*b*) shall be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 23 the proposed section 26H be omitted.

The proposed section 26H provides that in case of a transfer of a rent-free holding the raiyat will have to pay a certain amount of salami to the landlord. I do not see any reason why the raiyat of a rent-free holding should pay any salami to the landlord. As a matter of fact he does not pay any rent just now and there is no reason why we should saddle him with this Rs. 2 salami now.

Rai MAHENDRA NATH GUPTA Bahadur: I beg to oppose this amendment for the simple reason that my friend has made a mistake about rent-free tenures as well as rent-free holdings. Rupees 2 is the landlord's fee prescribed by section 12 (*2*) and (*4*) for rent-free tenures. A rent-free holding cannot certainly be in a better position than a rent-free tenure. Again, if this proviso be deleted the result would be that a raiyat of a rent-free holding will have to pay 20 per cent. of the value of the land which is more than Rs. 2.

Khan Bahadur Maulvi AZIZUL HAQUE: In view of the explanation given I beg leave of the House to withdraw my amendment.

The motion was then, by leave of the Council, withdrawn.

The following amendments were called but not moved:—

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 23, in the proposed section 26H, line 6, for the words "two rupees," the word "one rupee" shall be substituted.

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 23, after the figures and letter "26F" in sub-section (*1*) of section 26I, the figures and letters "26FF" shall be inserted.

Khan Bahadur Maulvi MUHAMMAD ISMAIL to move that in clause 23, for the proposed section 26I (*3*), the following be substituted, namely:—

"(*3*) The deposit of the landlord's transfer fee provided in sections 26D, 26E or 26J, or making of an application to the Court under the provisions of section 26G, shall operate as an admission by the landlord of the existence of the right of occupancy therein and be deemed to constitute an express consent of the landlord to the division of the holding and distribution of the rent payable in respect thereof except with regard to the amount of rent or the area of the holding so created."

Maulvi ABUL KASEM: I beg to move that in section 26I (*4*), line 1, the word "neither" shall be omitted.

I beg also to move that in section 26I (*4*), line 3, for the word "nor" the word "or" shall be substituted.

I beg further to move that in section 26I (*4*), lines 7 and 8, the words "other than the existence of a right of occupancy therein, or" shall be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE: So far as this clause is concerned it is stated that neither the acceptance of the landlord's fee nor the making of an application to the Court under the provisions of section 26G should operate as an admission. But I do not think, Sir, why it should not and I support this amendment.

MEMBER in charge, DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): The Khan Bahadur has made the position quite clear but our intention is that it should not operate as an admission. From the year 1907 it has been an admitted principle that acceptance of landlord's fee should not operate as an admission, and if it did so, landlords will not withdraw their money and thus one of the main objects of the Bill would be frustrated. I therefore oppose this amendment.

The motions of Maulvi Abul Kasem were then put and lost.

3-15 p.m.

Maharaj Kumar SRIS CHANDRA NANDY: Sir, I beg to move that in sub-section (*4*), of the proposed section 26I, for the words "occupancy-holding other than the existence of a right of occupancy therein," the word "tenancy" shall be substituted.

If a tenant having the right of a temporary tenure-holder transfers his tenure and in the deed of transfer mentions his status as that of an occupancy raiyat the landlord by accepting the transfer fee should not be deemed to have consented to such a status. In view of this difficulty the word "tenancy" is the proper word to be substituted as proposed above. The word "tenancy" will cover all classes of cases and difficulties will be obviated.

Rai MAHENDRA NATH GUPTA Bahadur: I beg to oppose the amendment. It is an absolutely retrograde one in the first instance. If the occupancy raiyat is not recognised, what is the salami paid for, then? The basis of the salami is that the raiyat is an occupancy raiyat. If you deny this, then you cannot claim the salami and keep it. No, you cannot eat the cake and have it at the same time. I oppose the amendment.

The motion of Maharaj Kumar Sris Chandra Nandy was then put and lost.

The following amendment fell through:—

Maulvi NURUL HUQ CHAUDHURI to move that in clause 23 in cause (*1*) of the proposed section 26J, the words "or a share or portion thereof" shall be omitted.

The following amendments were called but not moved:—

Maulvi SHAMSUR-RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 23, in the proposed section 26J (*1*), lines 3 to 8, the words "whose instrument of transfer or sale certificate purports to transfer the interest of a permanent tenure-holder or of a raiyat holding at a rent or rate of rent fixed in perpetuity" shall be omitted.

Rai HARENDRANATH CHAUDHURI to move that in clause 23, proposed section 26J, sub-section (*1*), in line 8, after the word "perpetuity," the following words be inserted, namely:—

"or of a rent-free holding or rent-free holding of an occupancy raiyat."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I move that in clause 23, in the proposed section 26J (*1*), line 8, after the word "perpetuity," the words "or of a rent-free holding" shall be inserted.

Sir, the reason for my moving this amendment is that a raiyat holding an ordinary holding may sell his holding as a rent-free holding and thereby avoiding the salami to the landlord.

Mr. F. A. SACHSE: We are willing to accept it. Perhaps it is correct to have the words here.

The motion was then put and agreed to.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I move that in clause (2) of section 26J, after the word "recover," the words "by application" shall be inserted, and for the word and figures "or 18," the word, figures and letter "18 or 26H" shall be substituted.

Sir, the reason for my moving this amendment is that if recovery means recovery by a suit it will cause a lot of delay, but if it is by application, it will hasten matters and will be less troublesome both to the landlord and the tenant.

Mr. M. C. GHOSE: Sir, on behalf of Government I may say that we are willing to accept the second part of the amendment as consequential to the amendment which has been accepted. But I object to the first part as it is quite unnecessary.

Mr. PRESIDENT: Having regard to what the Member on the Government side has said I think it would be better if I split the amendment into two parts and put them separately.

The following motion was then put and lost:—

"That in clause (2) of section 26J, after the word 'recover,' the words 'by application' shall be inserted."

The following motion was then put and agreed to:—

"That in clause (2) of section 26J, for the word and figures 'or 18,' the word, figures and letter '18 or 26H' shall be substituted."

The following amendment was called but not moved:—

Maulvi SHAMSUR-RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 23, in the proposed section 26J (2), lines 5 to 8, the words "together with such compensation as the Court thinks fit, not exceeding the amount provided in section 26D or 26E, as the case may be, as the landlord's transfer fee" shall be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE: I move formally that in clause 23, the proposed clause (3) of section 26J shall be omitted.

Mr. B. E. J. BURGE: I oppose this motion on the ground that if we delete this clause altogether it will simply mean that the fees paid by the raiyat will be the fees laid down under sections 12, 13,

17 and 18. It will simply lead to litigation because the landlord will immediately sue the raiyat for payment. I therefore oppose the motion.

The motion was then put and lost.

Maulvi NURUL HUQ CHAUDHURI, by leave of the President, moved the following amendments standing in the name of Maulvi Tamizuddin Khan:—

"That in clause 23, in proposed section 26J (*3*), line 5, for the words 'two months' the words 'one month' shall be substituted."

"That in clause 23, in proposed section 26J (*3*), line 5, for the words 'two months,' the words 'two weeks' be substituted."

Mr. B. E. J. BURGE: May I ask the hon'ble member which of these two amendments he prefers? I do not think there is any need to oppose these amendments except formally. Two months were agreed to in the other clauses of the Bill and it should apply in this case also.

The motions were then put and lost.

Mr. BIJOY PRASAD SINGH ROY: I move formally that in clause 23, after the proposed section 26J, the following section be inserted, namely:—

"26JJ In cases where, in the transfer notice, the names of tenants, area or rent have not been stated correctly enough for the clear identification of the holding transferred, the landlord may within two months of the receipt thereof return the notice and the transfer fee to the Collector by an application, stating therein the reasons why the same cannot be accepted and the mutation made, and he shall also notify the transferee accordingly; and thereupon the transfer shall become void as if it was not made."

Khan Bahadur MUHAMMAD ABDUL MUMIN: I formally oppose it.

The motion was then put and lost.

Mr. PRESIDENT: Amendments No. 757 to 762 and 284 will be taken together later on.

Khan Bahadur Maulvi AZIZUL HAQUE: I move that in clause 23, the following section be inserted after the proposed section 26J, namely:—

"26K. It shall be lawful for the Registration Office, Collectorate, Civil Courts to deduct such charges as may be prescribed on this behalf to meet the cost of establishment and other incidental charges for receiving, keeping and transmitting the fees or other monies as may be required by the provisions of this section or any other section of this Act, from out of the fees or monies tendered, deposited or paid under the provisions of this Act before such fees and monies are sent to landlords."

I have taken this practically from the definition of the cost of "transmission" in this Bill. In the present Bill as amended up to now, it has been left practically to the Local Government to direct as to who should pay. But I want the House to legislate and to lay down, that the transmission charges should be paid from the transfer fee. Sir, already we have passed 20 per cent. charges which would operate harshly at least in many districts of the province. If in addition to that, the Local Government, by its rules, wants that the transmission charges should be paid by the tenants, it would be of greater hardship. If I mistake not, the transmission charges will be no less than 5 per cent. and it will surely cause extreme hardship. I hope the House will agree that the amount should be paid out of the money which is deposited.

3-30 p.m.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I think that the mover of this amendment is not quite in order, because we have already accepted the principle in the former sections 26 and 12 where it has been decided by the House that the cost of transmission should be separate from the landlords' fee, or in other words, the House has already decided that the landlords' fee should be 20 per cent. of the consideration money or 5 times the rent net, and besides this the tenant will have to pay the cost of transmission. The effect of the acceptance of this amendment will be that we would have to go back on what we have already decided and deduct it from the amount of landlord's fee that has already been passed. This amendment, therefore, being inconsistent with the principle that we have already accepted, is out of order. If, however, you rule that it is not out of order, then on merits also I oppose it for the reasons that the mover wants that the registration office, the collectorate and the civil court, every one in their turn, to keep a running account in the name of either the transferrer or the transferee and find out the cost of the

transmission charges. It is quite possible in the case of a tenure-holder that the landlord's fee will not cover the cost of transmission, the cost of notices, etc. How is it then to be met? Moreover, from the administrative point of view it would be putting an amount of work on Government officials which it would be impossible for them to do.

Babu JOGINDRA CHANDRA CHAKRAVARTI: In this connection I would first like to draw the attention of the House to section 26C. Under clause (*2*) of that section it is laid down that a registering officer shall not register any such instrument unless it is accompanied by the process fee prescribed for the service of the notice on the landlord or his common agent, if any, a fee (hereinafter referred to "as the landlord's transfer fee"), and the prescribed cost of transmission of the landlord's transfer fee to the landlord or his common agent, if any. So far as this amendment goes, it means that all these fees—the process fee, the landlord's transfer fee and the cost of transmission of the landlord's transfer fee—will be deducted from the landlord's transfer fee before the money is actually transmitted to the landlord. So far as we can make out from what Mr. Mumin said we have accepted the principle that when a man goes to register his instrument of transfer, he has got to deposit certain fees. Then in this House we have not accepted clause (*20*) of section 3 which relates to the definition of the expression "cost of transmission". Although we have not accepted that, clause (*15*) of section 3 stands as it is, namely "prescribed" means prescribed by rules made by the Local Government under this Act. All we now find therefore is that the Government will prescribe by rules certain fees which the transferee or transferrer will have to deposit at the time the instrument of transfer is registered. That being so, we can safely make a provision like this; so far as the process fee and the landlord's transfer fee, which the tenant will have to deposit at the time of the registration of the instrument of transfer, it is all right, but if that money is to be transmitted to the landlord, I submit it is perfectly fair that the money-order fee should be deducted from the amount sent to the landlord. If my friend, Khan Bahadur Azizul Haque, will bring forward an amendment like that, we will be quite prepared to accept it.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of personal explanation, Sir. My friend has misunderstood that I was referring to process fee, and other charges. I was not. I was referring to this that the whole idea of Government was originally to get the establishment and other charges from the tenants. That clause has been deleted. My amendment merely says that it should be paid by the landlords.

The Hon'ble Sir PROVASH CHUNDER MITTER: As a point of enquiry, Sir, may I know whether the Khan Bahadur is moving this amendment or he wants to amend it in any other form?

Mr. PRESIDENT: He has moved his amendment, and merely gave an explanation as to why he moved it.

Maulvi ABUL KASEM: An objection has been taken by Government to this motion on the ground that the landlord's transfer fee should be 20 per cent. net. My friend to the left suggests that the money-order fee should be deducted from the amount deposited. So in that case the landlord does not get the 20 per cent. net. Besides, the work of transmitting this money, the keeping of accounts and the registers, serving of notices on the landlords, especially when there are various co-sharer landlords, all these will entail extra work in the Revenue Department of the Government, and the question is who is to pay for these. Do I understand that the ordinary tax-payer is to bear this expenditure? I submit that the landlord who gets out of the generosity of this House a sum of 20 per cent. on every transaction between the tenants, should meet the cost of the extra establishment. The tenants sell their lands in difficulty. Nobody, much less a Bengalee, would like to sell his property unless he is driven to take to such course by sheer necessity; and to ask that man not only to pay 20 per cent. as landlord's fee but also to pay the cost of transmission and the cost of the extra establishment that may be maintained in the Revenue and other departments will not only be unfair but will certainly be an act of oppression on the poor tenants. I submit this amendment should be accepted by this House. Some doubt has been expressed about the proper drafting of the amendment. I am not an expert in drafting, but I say that if the Legislative Department thinks that the drafting is not good, then you should allow this amendment to be properly drafted and see that that amendment is put before the House on short notice.

The Hon'ble Sir PROVASH CHUNDER MITTER: I am afraid we must oppose this amendment, because if this amendment be accepted or any redrafted amendment be accepted it will lead to complications. If the members will turn to section 26C, clause (2), they will find that the provision runs thus: "A registering officer shall not register any such instrument unless the sale price of each holding, portion or share thereof, is stated separately in the instrument and unless it is accompanied by.....a fee (hereinafter referred to as 'the landlord's transfer fee') of the amount provided by section 26D and the prescribed cost of transmission." So, the registering officer at the time of registration must receive the cost of transmission. Now, this amendment says that in addition to that it shall be lawful

for the registering officer to deduct such charges from the landlord's fee. That would mean that the registering officer will receive the charges twice over. Apart from that the registering officer has no machinery for keeping the necessary accounts. At the instance of some members of the Select Committee the registering officer was made the machinery for receiving this money, but it was found that a good deal of difficulty had to be overcome. Further, Sir, so far as Government are concerned, it does not matter at all whether the transmission fee is paid by the landlord or the tenant. The House should have come to a decision at the proper time, but it did not. As regards Mr. Chakravarti's point that the definition of the words "transmission fee" has been deleted, he has himself answered that point at a later stage of his speech, namely, we have still the provision about "prescribed cost". Therefore it is not possible for Government to accept this amendment either in its original or in an amended form.

Mr. A. K. FAZL-UL HUQ: Sir, the best solution would have been to deduct this money out of the salary of the Member in charge of the Revenue Department. But since my friend is not going to accept that suggestion and since it is no longer a votable item, I may point out to him that there has been a slight mistake on the part of my friend Babu Jogindra Chandra Chakravarti in not fully realising the real reason which led Khan Bahadur Maulvi Azizul Haque to move this amendment. The House will remember that an amendment to delete the definition of the expression "cost of transmission" was carried by this Council. That left us without any idea as to what the cost of transmission really is. As the Khan Bahadur has pointed out, it is necessary now for this House to indicate what the cost is. Whether that definition is given in the Act in some shape or other all that the Khan Bahadur proposes is this: so far as the charges regarding the cost of transmission, establishment and other incidental charges are concerned, these and no further shall be paid out of the 20 per cent. which the tenants pay at the time of transfer as landlord's fee. The language of this amendment has been taken practically from the language of the definition in the Bill. But the only point on which my friend has laid emphasis is as regards the cost of establishment and other incidental charges. I submit, Sir, that this is a very fair proposal and I do not think that either the registration office, or the civil court, or the collectorate would be put to any unusual difficulty in order to provide for the extra amount of work that will have to be undertaken in order to transmit the landlord's fee properly to the landlords.

3-45 p.m.

I submit that it will be merely taking away the proverbial straw from the camel's back. It is only for the purpose of lightening the

burden of the tenant that my friend has proposed this amendment, and to prevent his being made to pay indirectly something more. With these words I would ask the Hon'ble Member in charge to reconsider the position and I would also ask my friends to the left (the Swarajists) to consider whether they cannot support us on a proposal of this kind, when it is only wanted to give the tenant a little relief from the burden which he will have to bear if he is made to bear the cost of transmission, the cost of establishment and other incidental charges. It is not for the purpose of relieving him of the whole burden but only a portion of it. With these few words, I submit this amendment to the acceptance of the House.

Mr. JOGESH CHANDRA GUPTA: Sir, there is one thing that I feel I should draw the attention of this House to, so that the discussion over the matter may be shortened. If we turn to 26C(2) we find that it is therein provided that a registering officer shall not register any such instrument unless certain things are done and sub-clause (*d*) provides "Unless it is accompanied by the prescribed cost of transmission of the landlord's transfer fee to the landlord or his common agent, if any." Therefore, I do not think there is any room, after this House has passed that section as it stands, for any provision to deduct the cost of the transmission fee to the landlord out of any other money in the hands of the registering officer. Clause (*d*) provides that the prescribed cost of transmission, which will of course be prescribed by Government, of the landlord's transfer fee to the landlord, will have to be deposited at the registering office. Therefore, that portion of my learned friend's amendment for transmitting the fees does not arise—you could not provide that; that has to be paid. Then comes the question of the establishment and other things; well, regarding that the more sensible proposal, so far as the landlords and tenants are concerned, seem to be that advocated by Mr. Fazl-ul Huq—if it could be done—it should be paid out of the Hon'ble Member's salary. That of course cannot be done as the salary is paid out of a non-votable item; therefore it has to be borne by the tax-payers, and tax-payers would include landlords and tenants. So far as I can see, having passed 26C as it were, this present amendment becomes almost academic and there is no room for any short notice amendment as was suggested by Mr. Jogendra Chunder Chakravarti.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, may I draw your attention to the fact that I have given notice of amendment No. 1340 in which I have proposed that the word "prescribed" be omitted wherever it occurs. So I have kept room for this.

Dr. BIDHAN CHANDRA ROY: Sir, I am tempted to take part in this matter because there is one word, namely, "prescribed" which seems to be in my line, and when we write prescriptions we write sometimes very costly ones and sometimes very cheap ones.

Mr. PRESIDENT: Dr. Roy, have you made the correct diagnosis (Laughter)?

Dr. BIDHAN CHANDRA ROY: I made the diagnosis before the Bill came before the House. What my friend, Mr. Chakravarti, suggested on behalf of the Congress party was that in view of what has been already said by other speakers, would the Government try, when laying down prescription, to make it as cheap as possible.

Babu JITENDRALAL BANNERJEE: Sir, I appreciate fully the technical, the very technical, objection that was raised by Mr. Gupta: but all the same, technical grounds apart, will not the Government and the House consider the equity of the whole thing? So far as the tenant is concerned, he does all that is expected of him when he tenders the transfer-fee before the registering officer. As regards the cost of transmission, surely that ought to be the landlord's lookout as he is going to get the money. Therefore, why should the cost of transmission be an additional burden on the poor tenant? The suggestion made by Mr. Chakravarti was a fair and reasonable one; and I do not see why his party will not agree to it. Government ought not to stand upon mere technicalities and legal abstractions. Whenever they can afford relief, it is their duty to do so.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I will explain the position. The position is simply this: this amendment we cannot possibly accept. Of course if any short notice amendment be placed before the House, I may consider it; but that does not mean that I shall accept that. We must oppose this amendment which does not mean anything and even if it is passed it will be a dead letter.

Khan Bahadur Maulvi AZIZUL HAQUE: May I know Sir, what lines Government propose to take?

Mr. W. H. NELSON: I would like to know what the mover of the amendment means by saying "it shall be lawful for the registration office, collectorate, civil courts." Does he mean registration office, or the collectorate or the civil court?

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I mean the registration office or the collectorate or the civil court.

Mr. A. K. FAZL-UL HUQ: In view of the offer made by the Hon'ble Member in charge that he will consider a short notice amendment, may I ask you, Sir, to adjourn the discussion of this amendment as this will give us some time to have a talk with the Hon'ble Member in charge.

Mr. PRESIDENT: Sir Provash, is it your suggestion that the matter should be postponed?

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, that is not my suggestion.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and a division taken with the following result :—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Atiqullah, Mr. Syed Md.
Bannerjee, Babu Jitendralal.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Sarker, Rai Sahib Rebati Mohan.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Banerjea, Mr. A. C.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pramendra Narayan.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Dowding, Mr. T. W.
Dutt, Babu Saral Kumar.
Faroqui, Khan Bahadur K. G. M.
Fyfe, Mr. J. H.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdalkerim.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hussain, Maulvi Latafat.
Lala, Babu Saroda Kripa.
Luke, Mr. H. R.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Parrett, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.

Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Ray, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Nalinniranjan.
Sattar, Khan Sahib Abdus.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 19 and the Noes 64, the following motion was lost:—

"That in clause 23 the following section be inserted after the proposed section 26J, namely:—

'26K. It shall be lawful for the Registration Office, Collectorate, Civil Courts to deduct such charges as may be prescribed on this behalf to meet the cost of establishment and other incidental charges for receiving, keeping and transmitting the fees or other monies as may be required by the provisions of this section or any other section of this Act, from out of the fees or monies tendered, deposited or paid under the provisions of this Act before such fees and monies are sent to landlords.'"

4 p.m.

The following motion was called but not moved:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, to move that in clause 23, after the proposed section 26 J, the following be added, namely:—

"26K. On receiving the notice of transfer, the landlord shall enter the name of the transferee in place of the transferor who must be the recognised holder of the holding transferred, except that in the case of a portion transfer the name of the transferee shall be mutated only as a co-tenant:

Provided that such mutation will be in the nature of the creation of a new tenancy nothing in the Act will operate as a bar to any enhancement agreed to be made or claimed within a year after the receipt of the transfer notice by the landlord."

Mr. PRESIDENT: We shall now go back to the consideration of clause 22. I propose to take up amendments Nos. 186, 187, and 258, together.

The following amendments were called but not moved:—

Srijut TARAKNATH MUKHERJEA to move that in clause 22, line 1, proposed section 23A, after the words "section 23" the following words be inserted, namely:—

"and save where there is a contract to the contrary."

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur, to move that in clause 22, in the proposed section 23A, after the words and figures "section 23" the words "and subject to any contract in writing between landlord and tenant" shall be inserted.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur, to move that in clause 22, after the proviso to the proposed section 23A, the following shall be inserted, namely:—

"Provided also that the existing contract between landlord and tenant reserving the right of landlord in trees should be protected."

Mr. ALTAF ALI to move that in clause 22, in the proposed section 23A, after "plant" in clause (*i*) the word "and" be added.

Mr. ALTAF ALI to move that in clause 22, to proposed section 23A, after clause (*ii*) the words "any tree on such land" be added.

Mr. ALTAF ALI to move that in clause 22, to proposed section 23A, after clause (*iv*) the words "any non-fruit bearing tree on such land" be added.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur, to move that in clause 22, in the proposed section 23A, clause (*iii*), the words "and other products of" shall be omitted.

Babu SACHINDRA NARAYAN SANYAL to move that in clause 22, in proposed section 23A (*ii*), after the words "products of" the words "all the trees on the land" shall be added.

Babu SACHINDRA NARAYAN SANYAL to move that in clause 22, in proposed section 23A, line 11, after the words "any tree" the words "other than fruit-bearing trees" and after the word "land" the words "planted by him" shall be added.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 193, 195, 214(*b*), 216(*ii*), 218 (second part), 222(*b*), 223, 224,225—246, 248 and 249.

The following amendments were called but not moved:—

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 22, in the proposed section 23A after the words "any tree on such land" before the proviso the following shall be inserted, namely "except the following:—

(*1*) jack fruit,
(*2*) jam,
(*3*) tamarind,
(*4*) mango,

which will vest in the landlord and the landlord shall be entitled to enter upon the land for the purpose of enjoying such rights."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, to move that in clause 22, to the proposed section 23A (*iv*), line 2, after the words "any tree on such land" the words "except the following:—

(*1*) jack-fruit,
(*2*) chambal,
(*3*) karai,
(*4*) rangi,
(*5*) jam,
(*6*) jarul,
(*7*) dephal,
(*8*) tamarind,

which will vest in the landlord and the landlord shall be entitled to enter upon the land for the purpose of enjoying such rights" shall be added.

Mr. BIJOY PRASAD SINGH ROY to move that in clause 22, in the proviso to the proposed section 23A—

(*b*) the following shall be added after item (*7*), namely:—

(*8*) mango,
(*9*) jack-fruit.

Babu MAHENDRA NATH MAITI to move that in clause 22 the following amendment be made to the proviso to the proposed Section 23A:—

(*ii*) after item No. (*7*) the following be added:—

"(*8*) jack (do.).
(*9*) mango (do.)."

Maharaja JOGINDRA NATH RAY, of Natore, to move that in clause 22, in the proviso to the proposed section 23A, after item No. "(*7*)" the items Nos. "(*8*) mango, (*9*) jack-fruit" be added.

The following amendment was not moved:—

Babu AMULYA CHANDRA DATTA to move that in clause 22—

(*b*) from the said proviso item No. (*7*) "tal" in the Burdwan and the Presidency Division be omitted;

Mr. A. K. FAZL-UL HUQ: Sir, I beg to move that in clause 22, the word "Sal" in the proviso to the proposed section 23A be omitted.

Sir, we have now reached the closing stages of the debate on the Tenancy Bill, and all that remain for the Council now to consider

are such unimportant questions as the right of the raiyat to cut down some shrubs and dig his own grave and get himself burried there. Now, Sir, as regards the question of cutting down trees, I submit that in justice and equity the landlord should not be allowed to touch one single tree on the holding of a tenant. I would not have made any speech but for the fact that it is necessary for me to explain to this House the reason why I am moving this particular amendment, for I know that justice, righteousness and fair play have taken leave of the Bengal Legislative Council. I do not expect that this question will be looked at from the point of view of either justice or fair play, because we are at the mercy of an unsympathetic majority. Nevertheless, I am moving it in the interests of the millions of poor agriculturists who are not represented in this Council.

Sir, we have been taunted with the remark that we, who are fighting for the cause of the tenants, are like the proverbial three tailors of Tooley Street, who wanted to represent the people of England. Sir, we make no pretensions of that kind. We do not claim that we represent the tenants, but we certainly claim that the views which we are putting forward in this Council are for the benefit of the tenants of Bengal. We know that neither the three tailors on this side nor half a dozen barbers on the other side of the House can claim the right to represent the peasantry of Bengal. It is not a question of representation: it is a question as to what we feel to be the proper point of view, which should be put forward on such an important piece of legislation. It is for that reason, Sir, that I am moving this amendment.

Dr. BIDHAN CHANDRA ROY: Sir, may I remind Mr. Fazl-ul Huq that there are only two barber surgeons on this side of the House.

Khan Bahadur Maulvi AZIZUL HAQUE: May I rise on a point of order, Sir? Would it not be desirable to take up amendments Nos. 198—213 now, following the precedents you have created?

Mr. PRESIDENT: I think it is not desirable to upset the arrangement I have already made. It will only create complications.

Mr. A. K. FAZL-UL HUQ: Sir, for the reason which I have given just now, I move the amendment which stands in my name, namely, that in clause 22, the word "teak" in the proviso to the proposed section 23A be omitted.

Sir, I beg to move formally the following amendments that stand in my name, namely:—

"That in clause 22, the word 'sisu' in the proviso to the proposed section 23A be omitted."

"That in clause 22, the word 'gazar' in the proviso to the proposed section 23A be omitted."

"That in clause 22, the word 'sundri' in the proviso to the proposed section 23A be omitted."

"That in clause 22, the word 'mahogany' in the proviso to the proposed section 23A be omitted."

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I beg to move formally that in clause 22, item (7) of the proviso to the proposed section 23A be omitted.

The following amendments were called but not moved:—

Srijut BIJAY KUMAR CHATTERJEE to move that in clause 22, in proposed section 23A, in the proviso, for the item No. "(7) tal (in the Burdwan and Presidency Division)" the following shall be substituted, namely:—

"(7) piasal or murga."

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that clause 22 in the proviso to the proposed section 23A of the Act after item No. (7) the following be added, namely:—

"(8) kathal (jack-fruit)

(9) jam (blackberry)

(10) tetul

(11) siris."

Maharaj Kumar SRIS CHANDRA NANDY to move that if amendment No. 5 be not carried in clause 22 in the proposed sub-section 23A, after item "(7) tal" the following shall be added, namely:—

(8) jack-fruit,

(9) mango,

(10) jam.

Srijut TARAK NATH MUKHERJEA to move that in the proviso to clause 22, proposed section 23A, after the word "tal" the words "and khejur" be added.

Mr. E. T. McCLUSKIE to move that in clause 22 in the proviso to the proposed section 23A after item (7) "tal" the following shall be inserted, namely:—

"(8) mango and

(9) jack."

Babu SACHINDRA NARAYAN SANYAL to move that in clause 22, in proposed section 23A, in the proviso, the following shall be inserted, namely:—

" (*8*) mango,
(*9*) jack-fruit,
(*10*) cocoanut,
(*11*) black-berry."

Khan Bahadur Maulvi SYED MAQBUL HUSAIN to move that in clause 22, in proposed section 23A, after item No. (*7*) in the proviso the following shall be inserted, namely:—

(*8*) gamar
(*9*) jarool
(*10*) chaplais
(*11*) garajan
(*12*) chegarasi
(*13*) telsar
(*14*) tun
(*15*) choangiri

(In the Chittagong Division).

Srijut TARAK NATH MUKERJEA to move that in clause 22, in the proviso to the proposed section 23A, after item No. (*7*), the following shall be inserted, namely:—

" (*8*) kanthal (jack-fruit)
(*9*) mango."

Mr. KIRAN SANKAR ROY to move that in clause 22, in the proviso to proposed section 23A, after clause (*7*), the following clauses be inserted:—

" (*8*) jackfruit,
(*9*) simul,
(*10*) mango,
(*11*) karai,
(*12*) rasunia,
(*13*) poa,
(*14*) jam."

Babu SARAL KUMAR DUTT to move that in clause 22, in the proposed section 23A, in the proviso after " (7) tal, etc." the following list be added, namely:—

" (8) kathal
(9) jam
(10) tetul
(11) sris
(12) karai."

Mr. KIRAN SANKAR ROY and Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur, Rai SATYENDRA NATH ROY CHAUDHURI Bahadur, Srijut NAGENDRA NATH SEN to move that in clause 22, in the proviso to proposed section 23A, after the word " tal " in clause (7) the words " in the Burdwan and Presidency Divisions " within brackets shall be omitted.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur, to move that in clause 22, in the proviso to proposed section 23A, after item (7), the following shall be inserted, namely:—

" (8) jam,
(9) mango,
(10) jack-fruit."

Srijut NAGENDRA NATH SEN to move that in clause 22, proposed section 23A, the following be added at the end of proviso (7):—

" (8) mango,
(9) jack,
(10) jamboline
(11) jhau, and

Maulvi SHAMSUR-RAHMAN to move that in clause 22, in the proposed proviso to section 23A, lines 12 to 16, for the words and brackets " (in the Burdwan and Presidency Divisions) and the landlord shall be entitled to enter upon the land for the purpose of enjoying such rights " the following shall be substituted, namely:—

" (8) Mango,
(9) jack,
(10) jamboline.
(11) jhau."

Babu JATINDRA NATH CHAKRABURTTY to move that in clause 22 to item (7) in the proposed proviso to section 23A the following shall be added, namely:—

" but the right to enjoy its fruits and juice shall vest in the raiyat."

Mr. PRESIDENT: Now, I shall go back to amendment No. 196 (second part).

The following amendment was called but not moved:—

Mr. JOGESH CHANDRA GUPTA to move that in clause 22, in proposed section 23A, the proviso shall be omitted.

Mr. A. K. FAZL-UL HUQ: Sir, I beg to move that in clause 22, the proviso to the proposed section 23A, shall be omitted.

Sir, the amendment that I have proposed is quite clear, and I do not think that I need make any speech.

Mr. PRESIDENT: Now, I shall go back to amendment No. 197.

The following amendments were called but not moved:—

Babu SURENDRA NATH BISWAS to move that in clause 22, proposed section 23A, line 11, after the words "on such land" the following be inserted, namely:—

"and also to excavate a well or a tank or both for the supply of drinking water."

Mr. BIJOY PRASAD SINGH ROY to move that in clause 22, in the proviso to the proposed section 23A—

(*a*) the words "the following" shall be inserted after the words "in the case of" and the words beginning with "planted" to "1928" and the words "to the following trees" shall be omitted.

Mr. A. K. FAZL-UL HUQ: I move formally that in clause 22—

(1) the words in the proviso beginning with "in the case of" up to "1928" be omitted.

(2) in place of the proviso to proposed section 23A the following be substituted, viz.,—

"Provided that the raiyat shall not be deemed to have materially impaired the value of the land or rendered it unfit for the purposes of the tenancy merely by reason of his having done any of the acts specified in clauses (*i*) to (*vi*)."

May I point out to you, Sir, that you are going very fast, and it is difficult for us to follow you?

Mr. PRESIDENT: All right, I shall be slower. But will you please keep your book open in front of you, and be a bit faster in marking the amendments that I call out?

4-15 p.m.

The following amendments were called but not moved:—

Babu MAHENDRA NATH MAITI to move that in clause 22 the following amendments be made to the proviso to the proposed section 23A:—

(*i*) after the words "all right to the" the words "timber of" be inserted.

Maulvi KADER BAKSH to move, that in clause 22 in the proviso to the proposed section 23A, line 4, after the words "all rights to" the words "the timber of" shall be inserted.

Maharaja JOGINDRA NATH RAY of Nator to move that in clause 22 in the proviso to the proposed section 23A after the words "all rights to the following trees" the words "with respect to the timber thereof" be inserted.

Mr. KIRAN SANKAR ROY to move that in clause 22 in the proviso to section 23A, line 4, after the words "right to" the words "timber of the" shall be inserted.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I formally move that in clause 22 in the proviso to proposed section 23A line 4, for the words "all rights to the following trees" the words "all rights to the timber of the following trees" shall be substituted.

Khan Bahadur MUHAMMAD ABDUL MUMIN: The amendments on this subject are so varied and so many that it is really very difficult where to begin. I think the best thing would be if the discussion proceeds on 198 to 213 and if one of these amendments is carried, all other amendments would become unnecessary. Therefore, I think I shall confine my remarks to this amendment only.

What the mover of this amendment wants is that the proviso to section 23A should be deleted. The effect of that will be that in future the tenants will have full rights to plant trees on their holdings and to enjoy the fruits and produce and also will have full rights to the timber of such trees as well as of those which have been existing on their holdings from before. Personally, I am in sympathy with this amendment, but I must explain here the reasons why the proviso to which objection has been taken was added.

Babu JITENDRALAL BANNERJEE: On a point of order, Sir. My friend, Mr. Mumin, has practically confessed that he is not convinced of the necessity of this proviso. Should be under these circumstances defend the proviso?

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I did not say I was convinced of the necessity of the proviso. I said I was in sympathy with the proposed amendment.

Mr. PRESIDENT: I think Mr. Mumin's explanation ought to be accepted.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Section 23 says that the raiyat shall not be entitled to cut down trees in contravention of any local custom. From this perhaps one could infer that other rights to trees such as planting and enjoying the fruits are vested in the raiyats. But it is only a matter of opinion. As regards the cutting of trees, since it has been left to local custom, it has led to numerous disputes and litigations in the past. The custom as regards trees is not very definite so far as Bengal is concerned. It is fairly definite in Bihar. In Bengal we find from the reports of the Settlement officers that the custom varies in different localities. In most places the tenants do plant and enjoy the fruits of trees but there are places where landlords, after the trees are cut, claim a share in the timber of such trees. In some cases they claim the whole and in some cases only a fourth part. In some other cases they do not care to take any share at all. In order not to leave anything undefined, Sir John Kerr's Committee decided that in future the right to trees should be well defined and in order to meet vested interests—the interests of the landlords in trees—Sir John Kerr's Committee provide that the tenants will have full rights over trees and enjoy the fruits thereof but in the case of valuable timber the landlord will get a share if the trees existed from before the tenant was inducted into the land. Subsequently, it was thought that the words "valuable trees" were not definite and so it was decided to specifically mention those trees which were valuable only for their timber and for these reasons this proviso was added to the section. In this proviso seven trees were included in the timber of which the landlords will have a claim if the trees were in existence on the land from before. The amendments now propose that this should be deleted, the effect of which will be that established rights of landlords would be entirely ignored. The landlords have exercised some rights in the timber and as a sort of compromise it was decided to give them some interest in certain trees which are already in existence. At the same time it was decided that in future the tenants will have the full rights to other trees. I think it would be better if we consent to this proviso. After all it is not

very important to the tenant. The trees which are mentioned in the proviso are very seldom found on the tenant's lands. They are generally planted on zamindar's own lands. Therefore, I think it is not very serious so far as tenants are concerned. They will not be seriously affected by the proviso.

Maulvi ABUL KASEM: I rise to support this amendment and the very fact that such a large number of members have given notice of this motion shows that not only it is an important point but it has the support of a very large section of the House. Sir, a halting and hesitating defence has been offered by Government. The only argument put forward is that there has been a custom. Although the custom is not definite in Bengal, there it exists. And therefore it, being a vested interest, ought to be protected. Sir, I cannot understand that simply because there is a custom we have to accept it and follow it. Sir, in our social life we are moving fast and do we follow that customs that are at least definite, and have been in existence for ages. But when the question of cutting some trees here and there is concerned we are told that a compromise has been arrived at as regards that. Sir John Kerr's name has been introduced and that alone shows the weakness of the case. Sir, we are further told that these trees are not generally grown on the tenant's land and therefore it will not materially affect the tenant. If that is so, how could it materially affect the landlord? Can he not also forego his statute right to these trees? As regards the custom we have again been told that it varies in different places—that the zamindars in some places claim their right to trees and in others they do not. My explanation to this is this: where the tenants are weak and helpless there the landlords have exercised their rights and where the tenants have resisted the claim with sufficient strength there the zamindars have given in. I submit that even if there was a definite custom that custom should not be done away with. We have been told that the object of the introduction of this piece of legislation is to give the tenant some rights and to define these rights clearly. I say that in this case also the rights should be very clearly and definitely defined.

Khan Bahadur Maulvi AZIZUL HAQUE: I support this amendment as being one of those who gave notice of it. I certainly join with my friend, Maulvi Abul Kasem, in saying that the defence which has been put forward from the Government side is very weak. It is a defence which can only be put forward on behalf of the accused in his guilty conscience. I beg to suggest that this question of custom does not arise at all. The plea of custom is really one of the defects of the present law. If the Revenue Department will make enquiries they will be able to find out that the right to trees has all along belonged to the tenants. In this connection I may be permitted to

refer to a patta which the Government of Bengal prepared for the use of zamindars of Bengal in 1772 and in that patta it is definitely mentioned that the trees upon the land belong to the tenants. That was at the time when the Permanent Settlement was going to be introduced. The Government introduced the draft patta clearly accepting the right of tenants to the trees. In the Rent Commission Report of 1880 we also find it mentioned that it was customary in many parts of Bengal that the trees grown on the holding belong to the tenants.

4-30 p.m.

In the Bill of 1885 it came as a matter of accident. It was introduced by the Select Committee without assigning any reason simply because, as has been pointed out in more than one place, two landlords from the province of Bihar, pressed for putting this clause. I have nothing further to say than that the present proviso if retained will bring in litigation and endless litigation.

Babu JITENDRALAL BANNERJEE: I have been taken by surprise at Government's attitude on this matter. Before the amending Bill formally came up before the House, we were assured by a high Government official who might blush to find his name mentioned today that, so far as the proviso regarding trees was concerned, Government would not oppose the deletion of the proviso if there was a substantial agreement between the different parts of the House. We find that there *is* a substantial agreement between the different parties in the House: the tenants' party, the landlords' party and the Swarajists are agreed as to the deletion of the proviso, and it is only the Government that is now backing out. In fact the concern of Government for the rights and interests of the landlords is something more keen and acute than that of the zamindars themselves.

So far as the deletion of the proviso is concerned, I support it mainly on the ground that the proviso as it stands is absolutely impracticable and unworkable. What does this proviso say? It says that the zamindars would be entitled to all trees planted before 1928, while as regards trees planted after 1928 there would be certain specified reservations in their favour—for instance in the case of such trees as the sal, sisu, teak, mahogany, etc. But how is this demarcation to be made? After five or ten years from now, how is one to determine whether certain trees were planted before the psychological year 1928 or after 1928? Will Government proceed to affix brass plates to the trees in order to indicate that such and such trees were planted before 1928 and such and such trees planted after? Are they going to do that? Otherwise how is the question going to be settled afterwards?

One brief remark I may be permitted to make upon the amendment which, curiously enough, was fathered by Babu Jogindra Chandra Chakravarti. Babu Jogindra Chandra Chakravarti says that, so far as certain trees are concerned, all rights in them will be granted to the tenants—with the trivial and unimportant exception of timber. Yes, so far as the sal, teak, sisu, gazar, sundri and mahogany are concerned, he will give everything to the tenants—fruits, leaves, bark, everything, with the sole exception of timber! And thus it will happen that the tenants will feed upon the succulent fruits of the sal, sisu and mahogany; they will boil the leaves and eat them in years of famine; and they will use the bark for wearing apparel! I am quite sure my friend was not serious in moving this amendment and I hope he will not press it to the vote.

[At 4-40 p.m. the Council was adjourned and it reassembled at 4-50 p.m.]

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: With regard to the right to trees we of the zamindar party are willing to give the tenants that right. Though we have been called rack renters and all sorts of things still we concede to them this right.

The Hon'ble Sir PROVASH CHUNDER MITTER: I want to make a statement which may shorten discussion. I laid down a formula for my guidance, namely, that I stand by the Bill but if important majority groups in this House come to a decision which is against the Bill I am always prepared to accept such decision. In this case I accept the decision with little hesitation as it is in favour of tenants. Here I find that the tenants' party is willing to accept it and the landlords' party is willing to accept it and I have ascertained that my friends on my right are also willing to accept it so the Government are quite willing to accept the amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I support the amendment moved by Mr. Fazl-ul Huq and I do so not only on my own behalf but also on behalf of the party to which I belong. After the statement made by the Maharaja of Mymensingh and also by the Hon'ble Sir P. C. Mitter, I need only mention one or two points which are very simple. The proviso as it stands is worded in such a way that the inevitable consequence of retaining it would be that if after a few years any question arises as to when a particular tree was planted, it would be impossible for the Court to come to a decision on the point, because evidence would not be available at the time to show that a particular tree was planted in a particular time and year unless Government keep a register of trees, and therefore it would be impossible to make out whether a particular tree was grown in 1928

or in 1929. I would therefore submit that the proviso as it is worded seems to be absurd. With regard to other questions if the hon'ble members will read section 23 as it stands in the present law, they will find that it reads: "When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy, but shall not be entitled to cut down trees in contravention of any local custom." The only restriction that was put upon the rights of occupancy raiyats with regard to the cutting of trees was that unless there was a local custom no occupancy raiyat could cut down trees—not only a particular kind of tree but all sorts of trees. The only factor that decided this question was the local custom in a particular locality and when we are going to change the law, when we are going to legislate not on the lines of ancient custom, but on the broad principles of justice and when we are going to give the raiyats the right of cutting down trees, it stands to reason that we should not make any distinction between one tree and another.

Mr. J. L. Bannerjee in his speech observed that he was surprised to find that I moved an amendment that "all rights to the timber of the following trees" should be substituted, the trees being sal, teak, sisu, mahogany and tal (in the Burdwan and Presidency Divisions). Mr. Bannerjee comes from Birbhum and must be very familiar with the fruit and juice of tal trees. My amendment was therefore necessary only in case the present amendment was not carried, but having regard to the fact that we are all supporting it, it will not be necessary to consider that or any other amendment and the amendment I moved automatically falls to the ground.

With these words I whole heartedly support the amendment moved by Mr. Fazl-ul Huq, namely, that there should not be any distinction between one tree or another and that the tenants' right should be unfettered and absolute.

Dr. BIDHAN CHANDRA ROY: I would just make one or two observations. You were perfectly right, Sir, when you said that my diagnosis was correct when I stated that the zamindars were willing to give up their rights as regards trees and that if the tenant's party in this Council, the zamindars and the Congress people came to an agreement on this question, the Government should agree also. About four years ago a resolution of this character was tabled for discussion before this House which however did not come up for want of time. But when this matter was dicussed by the party to which I then belonged, a party which consisted mainly of zamindars, there was a great deal of fight over this question as to whether the zamindars should yield to a further extent, that is to say, whether they would allow the tenants to dig tanks, cut down trees and so on. I then

perceived the difficulties of the zamindars in getting out of their previous position, namely, that they should continue to enjoy the trees and the rights in the land quite apart from the tenancy rights given to the tenants. But to-day I find that things are quite different and I am glad to see that here also my diagnosis would be found to be correct. I am glad to see that the zamindars have come back to their position that they should occupy in the land and recognise that both the Government and the Congress people are prepared to agree with them and give them their due. But I think, Sir, the tenants' party should also give the landlords their due and I would therefore suggest that the Hon'ble Maharaja Bahadur make a statement which will show that this right over trees has not been given to the tenants after a fight but is only the result of a graceful and gracious compromise on the part of the zamindars. It is also a matter on which the tenants should congratulate themselves because in it they see signs that a time has come when there should be an adjustment between the interest of the tenants on the one hand and those of the landlords on the other.

Mr. M. ASHRAF ALI KHAN CHAUDHURI: There has been much argument for and against many amendments that have been moved before in this Bill but as regards the cutting down of trees there has been no argument at all on behalf of the zamindars and I congratulate the zamindars' party for having conceded to the wishes of the masses. There were amendments against which the zamindars fought and won but in this particular respect it is a matter of great pleasure that they have heard and conceded to the wishes of the public. The public had been crying for a long time for some such rights and the zamindars like the proverbial absentee landlord were absent from hearing those clamours which were thoroughly just.

As regards the question whether all trees could be cut or only trees that were planted after the Act had come into operation, many arguments have been advanced and I need not repeat any at the present moment. And since Government have accepted this amendment they also should be congratulated. With these few words I support this amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: As there is unanimity on this question I move that the amendment be now put.

The motion that in clause 22, the proviso to the proposed section 23 A, shall be omitted was then put and agreed to.

Mr. PRESIDENT: Having regard to the fact that this amendment has been carried, it is not necessary to put amendments up to 261, unless any member wants to move any particular amendment out of those for any detail or details.

Mr. A. K. FAZL-UL HUQ: I submit that in spite of the decision of the Council with regard to the proviso, my amendment No. 215 (*2*) should be considered by this Council. My reasons briefly are these: Clause 22, which introduces the new section 23A, begins by saying that subject to the provisions of section 23 the raiyat will have certain rights, that is to say that the raiyat shall have the right set forth in this clause 22, or in other words 23A, subject to the provision that he shall not be deemed to have materially impaired the value of the land or rendered it unfit for the purposes of the tenancy. The House will remember that these are some of the conditions for which a raiyat may be ejected. Therefore it becomes necessary to declare whether, merely because a raiyat cuts down a tree, the landlord shall be entitled to say that by reason of that tree having been cut, the value of the land has been impaired or that the holding has been rendered unfit for the purpose of tenancy. It may be that the courts may decide against the landlord, but still it will leave the door open to litigation because the landlord can still question the action of the raiyat by saying that by doing any kind of action from (*i*) to (*iv*) he has used the land in a manner which materially impaired the value of the land and rendered it unfit for the purposes of the tenancy. I wish to make it clear that, merely because a raiyat has exercised his right, he has not thereby rendered himself liable to any of the penalties to which he may be subject in case he had been deemed to have used the land in a manner which will impair the value of the land or render it unfit for the purpose of the tenancy.

5 p.m.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I regret I cannot support this motion which reads thus:

"Provided that the raiyat shall not be deemed to have materially impaired the value of the land or rendered it unfit for the purposes of the tenancy merely by reason of his having done any of the acts specified in clauses (*i*) to (*iv*)."

If we read this along with section 23 which again reads thus:

"When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy."

Then again when section 23A comes in, the position is perfectly clear: section 23A reads thus:

"Subject to the provisions of section 23, when a raiyat has a right of occupancy in respect of any land, he shall be entitled—

(*i*) to plant,

(*ii*) to enjoy the flowers, fruits and other products of,

(*iii*) to fell, and

(*iv*) to utilize or dispose of the timber of, any tree on such land."

It seems to me that it is perfectly clear from this that the mere fact that a raiyat wants to plant a tree it is certainly not an act which may be described as materially impairing the value of the land; if he enjoys fruits, flowers and other products of a tree, that certainly is not an act which may materially impair the value of the land; if he fells a tree and utilises or disposes of the timber, that also cannot be said to be materially impairing the value of the land, because under section 23A he can do all these things.

If this amendment be accepted I submit the section becomes absolutely meaningless. It seems to me that the amendment is perfectly out of place, having regard to the fact that we have already made it perfectly clear in this Bill that an occupancy raiyat has the power to do all these—to plant trees, to enjoy fruits and flowers and to fell and utilise or dispose of the timber. Therefore it does not stand to reason that another clause should be added saying that these acts will not amount to materially impairing the value of the land. In my humble judgment I think if we have this clause introduced here, it will only lead to complications and it would be very difficult to make out the intention of the legislature when the question comes before any court of law.

Babu MANMATHA NATH ROY: On a point of order, Sir. Is it open to any member now to move this motion in view of the decision of the House already arrived at?

Mr. PRESIDENT: I have already considered that point and have allowed the member to move it.

Mr. B. E. J. BURGE: I join hands with Mr. Chakravarti in opposing this amendment. Before I go into the merits of the amendment, I would like to call the attention of the House to the two curious parts of the amendment moved by Mr. Huq. The first part that has already been carried is that all rights shall vest in the landlord absolutely. The second part is quite another thing. What does

he mean? Anyhow, take the second part of the amendment; as pointed out by Mr. Chakravarti, the amendment is redundant. The actual question which will arise in practice is this: is the tenant going to impair the value of the holding? If he does so, I maintain that it is a question for the court to decide. If he merely plants or cuts or enjoys the fruits and flowers or utilises or disposes of the timber of trees, he cannot impair the value with a view to what is laid down in section 23. On the other hand, if he plants on a bigha of land 50 trees, obviously the court will take cognisance of the case that he has impaired the value of the land, and if the amendment be carried, it would be fettering the decision of the court. I do not think the amendment will serve any good or useful purpose.

The motion of Mr. A. K. Fazl-ul Huq was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ali, Maulvi Syed Naushar.
Atiquliah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur.
Rehman, Mr. A. F. M. Abdur.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Soleiman, Maulvi Muhammad.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Promotha Nath.
Bannerjee, Babu Jitendralal.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Babu Pranendra Narayan.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Farequi, Khan Bahadur K. G. M.
Forrester, Mr. J. Campbell.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hagg, Mr. G. P.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mittar, the Hon'ble Sir Prevash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Parrett, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.

Roy Choudhuri, Rai Bahadur Satyendra Nath.	Sen, Mr. Satish Chandra.
Sachse, Mr. F. A.	Sen, Srijut Nagendra Nath.
Sarker, Babu Naliniranjan.	Stapleton, Mr. H. E.
	Wordsworth, Mr. W. C.

The Ayes being 16 and the Noes 63, the following motion was lost:—

"That in clause 22 in place of the proviso to proposed section 23A the following be substituted, viz:—

'Provided that the raiyat shall not be deemed to have materially impared the value of the land or rendered it unfit for the purposes of the tenancy merely by reason of his having done any of the acts specified in clause (*i*) to (*vi*).'"

The Hon'ble Sir PROVASH CHUNDER MITTER: I beg to move that clause 1 (*2*) be omitted. The reason is this: under this clause of the Bill it is provided that it will extend to the whole of Bengal with certain exceptions, but in the pre-amble to the original Act there is provision for its application to the whole of Bengal. This is therefore a necessary but a formal amendment to the proposal in our Bill.

The motion was put and agreed to.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, in the absence of Babu Akhil Chandra Datta, a member of our party, I beg to move, with your permission, the following amendment which stands in his name:

"(3) It shall come into force on 1st January, 1930."

Mr. F. A. SACHSE: Sir, I am extremely surprised to find Babu Akhil Chandra Datta or any of his friends moving an amendment which will have the effect of postponing the date of the abolition of commutation. The only reason I can think of for putting off the date of the Act coming into force is that he wishes to turn out under-raiyats who have been in possession for over 12 years and to put in bargadars in their stead. The intention of Government is that the Bill should come into effect as soon as the Governor-General has given his assent to it and it has been published in the *Gazette*. That is the ordinary rule, and I do not think in a complicated Bill like this there is any danger that this will happen before people have had plenty of time to consider it properly and to make the necessary arrangements.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, may I have one point cleared by Mr. Sachse? He will remember that the provisions relating to transfer will come into operation from the 1st April 1929. What I want to know is whether it is intended that the whole Bill will come into force from that date.

Mr. F. A. SACHSE: No, Sir. The provisions of sections 26B to 26J, will come into force from a particular date later than the rest of the Bill. This is provided for in section 23A. The reason is that Government thought that they must have a little time to make arrangements for the elaborate machinery necessary for the collection and transmission of landlords' fees. The rest of the Bill, like any other Bill, will come into force as soon as it has been passed by the Governor-General and published in the *Gazette*.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I would beg leave of the House to withdraw the amendment.

The motion was then, by leave of the Council, withdrawn.

The following amendments were called but not moved:—

Maulvi KADER BAKSH to move that in clause 4 (*a*), in the proposed proviso, line 6, after the word "tenant" the following shall be inserted, namely:—

"Notwithstanding any presumption to the contrary arising from any entry in the record-of-rights made under Chanpter X of this Act, whether before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928."

Babu JOGINDRA CHANDRA CHAKRAVARTY to move that in clause 4 (*a*) in proposed proviso, line, 6 after the words "is not a tenant" the words "notwithstanding any presumption to the contrary arising from any entry in the record-of-rights made under Chapter X of the Act, whether before or after the commencement of the Bengal Tenancy Act, 1928" shall be inserted.

Babu SURENDRA NATH BISWAS: I beg to move that in clause 4 (*a*) after the proposed proviso to clause (*3*) of section 3 the following be added, namely:—

"Provided also that nothing contained in the record-of-rights prepared before the commencement of the Bengal Tenancy (Amendment) Act, 1928, shall give a cultivator under the system known as "adhi", "barga" or "bhag" any tenancy-right."

Sir, the House has already declared that such a cultivator is not ordinarily a tenant. The principle for such declaration is certainly based on the special character of the system of such cultivation. It must have originated in cases when an owner of the land could not cultivate the land with his own hands or by servants or by daily labour but had it cultivated by labourers who would cultivate the land for the owner on a remuneration of a share of the crop raised thereby.

Such a system was very much conducive to the interest of the landless labourers. That was certainly not a tenancy but a sort of partnership business, one party giving the land and the other party giving the labour. And it was optional for both the parties to continue the business or not. But yet the system having a bit of speculation in it, that is, the remuneration having depended upon acts of God, both the parties generally agreed to continue the business for a length of time. And for this reason there were written agreements or kabuliyats in some cases and there was oral agreement in others. In these kabuliyats it is specifically written, as most of the members are aware, that the bargadar promises to cultivate the land on the condition of getting a share of the crop as his পারিশ্রমিক i.e., remuneration for labour.

Since the inception of this system the bargadars themselves had been knowing that they have no tenancy right in the land. And so long there had been no conflict between the bargadars and their masters as to their status. And still in the majority of places no such conflict exists to-day. But, unfortunately, there have been conflicting decisions in law courts as to the status of bargadar, and the bargadars have been recorded in settlement record-of-rights as tenants. The interests of thousands of poor people were thus affected.

Now, it was high time to set at rest the above decisions and counteract the record-of-rights and the Government have done so in this Bill by amending section 3 of the Tenancy Act.

Sir, in this connection I should like to read an extract from the Report of the Tenancy Act Committee, 1927, in which they give the reasons for which they made this proviso in the Bill. They said:—

"All the members recognised that the great majority of bargadars, if tenants at all, are under-raiyats, not raiyats, and that one of the reasons why commutation has seemed so inequitable to settlement officers, and has therefore been so little encouraged, is that it did not apply to under-raiyats. Under-raiyats under the present law are practically tenants-at-will, and there is not much difference between tenants-at-will and labourers. From this point of view there are not many bargadars who stand to lose very much by the proposed provision in the Select Committee's Bill, even those who have been recorded as tenants in the records-of-rights framed for most of the districts of Bengal from Bakarganj onwards."

That is, they intended that a bargadar, though recorded as a tenant in the record-of-rights, shall have no right as such. But they however inserted two exceptions in the provisos (*a*) and (*b*) to section 3 (*2*), wherein they provided for the cases in which a bargadar could have the rights of a tenant. But at the same time they rejected the proposal to make a third exception in favour of bargadars who

had been recorded as tenants in a record-of-rights because they thought that this would result in the recognition of practically all bargadars as tenants. This was just the thing what the people wanted and we welcome the legislation. But still there remains a defect which I want to cure by the amendment I have moved. Let me show what and how.

Without my amendment the law will be as follows: A bargadar shall be regarded as a tenant if he has been admitted as such by the owner of the land in a document.

So far there is no difficulty. But there is another provision that a bargadar may be a tenant if he has been or is held by a civil court to be as such.

Now, when the question whether a particular bargadar is a tenant or not will arise in a civil court, the bargadar will avail of the presumption of the record-of-rights wherein, as most of the members are aware, the bargadars have been recorded as tenants. And this presumption, I submit, the bargadar should not be allowed to use in his favour. My reasons are these: In almost all the districts of Bengal the bargadars have been recorded as tenants without any question arising as to their status. It appears that the settlement officers regarded the share of the produce under barga system as rent in kind and also that they were influenced by the conflicting decision in law courts as to the status of the bargadar and accordingly recorded them as tenants. The bargadars did certainly not claim the rights of a tenant. I can bear personal testimony to this fact.

Now, in the case of barga where there is kabuliyat the owner of the land shall be able to rebut the presumption of record-of-rights by proving the kabuliyat, but where there is no written lease whatsoever, the owner of the land shall not be in a position to rebut the presumption which can alone be rebutted by strong unimpeachable evidence, ordinarily documentary evidence. And I can tell the House that the cases of barga without kabuliyats are not small. Sir, I would request the hon'ble members to just realise the position of poor people who get their lands cultivated under barga system but without kabuliyats. It is mainly to protect these poor people that I have brought this amendment. These people have as much claim for protection of their rights as the other tenants have and amongst them there are many tillers of the soil such as raiyats and under-raiyats who, for unfortunate family mishaps, have been obliged to cultivate their lands under barga system.

Sir, I do not understand why the bargadars will be allowed to enjoy the privilege of claiming the right of tenancy simply on a record for which neither they nor their masters were responsible. If the new provision is really meant for protecting the right of the

owners of the barga land, and I sincerely believe it is so, then I think it is the bounden duty of the legislature to see that the protection can be actually enjoyed. My amendment gives that protection.

Sir, my amendment does not effect the just rights and privileges of the bargadars. They shall be entitled to prove in the civil court the positive facts and circumstances under which they acquired the right of tenancy as entered in the record-of-rights. Sir, barga and tenancy is not the same thing. Barga in its inception is not tenancy. It may subsequently develop into tenancy under certain facts and circumstances. Let them prove those facts and circumstances who assert their existence in a court of law. Is it fair and proper to ask the owner of the land to prove the negative?

Sir, it may be said that there may be cases where the record has been made as a result of decision of a dispute by a settlement officer. Sir, I would like to draw the attention of Rai Mahendranath Gupta Bahadur to the fact that if there are such cases, and I am sure they are rare, then the decision must have been either arbitrary or based on positive facts. If the decision has been arbitrary, the bargadars do not deserve to get any privilege thereunder. But if it is based on facts, the bargadars will be at liberty to prove them in the civil court.

It may, however, be said that it will be an injustice to deny the bargadars the presumption based on such decision of facts. But I saw that if it is an injustice it is too insignificant in comparsion with the stupendous injustice that will be done to the unfortunate landlords. Sir, it is an elementary principle of law that when the conveniences and inconveniences are balanced and one is found much heavier than the other, then both law and equity must help the heavier one. In this case the inconvenience and injury that the owners of the barga land will suffer owing to record-of-rights for which they are not the least responsible will be much, much greater than what may literally be suffered by the bargadars. And I have shown that the bargadar will not suffer the least injury because in fact he will have the advantage to prove his positive claim in the civil court.

5-30 p.m.

So, I submit, Sir, that once the House has recognised the principle that the bargadar is not ordinarily a tenant and that he will not be entitled to be regarded as such, except under special circumstances, the House ought, in all fairness and justice, to see that the onus of proving those special circumstances is placed on the bargadar who claims the tenancy right. Please do not allow him to discharge the onus simply by proving the record-of-rights for which, as I have said, neither he nor the owner of the land is responsible. I ask the House

again to realise that if he is so allowed it will be impossible for the owner of the land to rebut the presumption in cases of barga without kabuliyats. So, I most fervently request the members to be considerate and see that the bargadar may not take undue advantage of a record-of-rights.

Sir, I appeal on behalf of the middle-class people of Bengal, who do ordinarily cultivate their lands under barga system, and who belong to all classes, Hindus, Muhammadans and Christians, and amongst whom there are various grades of tenants such as tenure-holders, raiyats and even under-raiyats in certain cases, and whose number is not insignificant, and I appeal most sincerely to the House to protect their interests.

Sir, I make no unjust appeal, but I stand on right and appeal that the right is not infringed for no fault of theirs. The bargadar was never regarded as a tenant in our country, and the bargadar himself never claimed the right of a tenant. Neither party intended to create a tenancy at the time of barga settlement. I trust the members who are conversant with the barga system of cultivation will bear me out. That being so, I appeal to the House to protect the middle-class against the unjust invasion on their rights. They deserve as much consideration as the tillers of the soil. It is the middle-class who form the backbone of every country and every community. It is the middle-class who are responsible for the spread of civilization, and culture throughout the country, and it is the middle-class through whom alone the inspiration of social and political evolution in a country emanates to the masses. It is therefore in the interests of the masses themselves that the middle-class also should be protected. (Derisive cries of "Hear", "Hear").

Sir, I am afraid my amendment will not find favour with my friends on the right. I say so because I have in the majority of occasions found that whatever falls from our mouths they have made it a religion to oppose. Whenever we speak, they think that we speak for the zamindars whom they are out to oppose, right or wrong. But I can assure them that we are not here to protect one party and oppress another. Our consistent and honest policy has been to protect as far as possible the due rights of every party. (Derisive cries of "Hear", "Hear"). We have accordingly tried to harmonise the various interests that exist to-day under the law of the land. And it is in pursuance of such policy that I appeal to the House to protect the interests of the owners of the land who cultivate their lands under the system of barga, adhi, and bhag. And before I resume my seat, I should like to remind the House that those owners of barga land are mostly raiyats, under-raiyats, and tenure-holders, and they come from all classes of people—Muhammadans, Christians and Hindus.

With these words, Sir, I commend my amendment for the acceptance of the House.

Khan Bahadur Maulvi AZIZUL HAQUE: Mr. President, Sir, in the name of all that is holy, or glorious, in the name of religion or want of religion, my friend has appealed to us. Sir, I think, I should reciprocate that appeal. I appeal to him not on behalf of the upper or the middle, but on behalf of the lower and the lowest classes. Sir, there are very few people in this world who make an appeal and appeal successfully on behalf of the poor people who are the tillers of the soil. While making that appeal, we have encountered difficulties times without number. And I think our difficulties come to us in the shape of amendments like the one which has been put forward by my friend, Mr. Surendra Nath Biswas. Sir, he has made an appeal that we should try to bring about harmony. Sir, if harmony means the protection of one class, surely I understand his position. On the other hand, if my friend is consistent, may I ask him how dare he take away the rights of the people. After all, this right is merely a presumption in favour of the tenants, and nothing else. If the landlord of a bargadar wants to sue him in a civil court there is nothing to debar him from doing that and proving that the settlement records are wrong. But, Sir, the proposal wants to shift the onus from the landlord to the tenant, and nothing but that. Why put a man in the lower stratum of society in this difficult position, and not the man in the upper? I do not understand why the middle-class gentlemen who are educated, and cultured, and upon whom all sorts of encomiums are showered, should not be able to protect themselves. The middle-class people know very well how to protect themselves, whereas the people belonging to the lowest stratum do not know how to protect themselves. I would refer my friend to the judgment of Mr. Justice Mahmud that if any presumption is to be recognised in law, it should be in favour of the man who is helpless and not in favour of the man who knows how to protect his rights. So far as my friend is concerned, I think it is too late in the day to decry settlement records. These settlement records, so far as I am aware, have settled agrarian disputes in the broad interests of the country. These records may have affected the interests of a few persons, but I am sure that it is these settlement records that have brought about agrarian peace in the country.

Sir, I do not know why my friend wants this amendment. Does my friend want that those persons who have been recorded as tenants for the time being in the settlement records should themselves go to the civil court or the criminal court—that they should run to litigation—in order to protect their rights? Otherwise I do not see why the presumption should be in favour of the landlord.

Sir, [illegible] d has quoted law and equity. I want to know under what equity, under what principle of justice, he comes to the legislature and says that the settlement records are wrong, though it was open to him to institute proceedings under sections 105 and 106. Sir, of late we have been hearing too much against the Settlement Department. I can quite understand a frontal attack on the Settlement Department, but I cannot understand these side attacks. These flank attacks affect the tillers of the soil; they affect those very people on whom the middle-class people depend. My friend will commit a great mistake, a suicidal blunder, if he wants to protect the landlords and the middle-classes only and forget conveniently the poor people who are actually the tillers of the soil.

Sir, so far as this amendment is concerned, it wants to disturb the present presumption in favour of the tenants, and I do not see any justification for taking it away. I could have understood it if my friend had cited instances of injustice in any particular district. He has done nothing of the sort. No complaint has been made; the press has not agitated against this presumption; the people have not ventilated their grievances. Sir, we are not to legislate in vacuum, and I do not understand why we should attempt to undo a long-standing principle. So far as the respective rights of the landlords and the tenants are concerned, they were in such a confusion, that Government had to undertake the settlement operations at a huge expense in order to settle agrarian disputes. Under the circumstances, I hope my friends will not attempt to disturb this long-established principle.

Mr. M. C. GHOSE: Sir, there seems to be a confusion in the mind of the hon'ble gentleman, who moved the amendment, about the meaning of the term "bargadar." Nowhere is the term bargadar defined in the Act. I am afraid different gentlemen understand it differently. Ordinarily by the term bargadar one understands him to be a person who cultivates the land of another person and pays the latter a certain proportion of the produce, say half or one-third. Now, as the mover of the amendment has pointed out, most of the bargadars work during the pleasure of the landlord. Whenever the landlord pleases, he may turn out the bargadar. The settlement records, which are prepared accurately, show them as tenants in some cases. I may be permitted to give a few facts. In the Jessore district, where I was District Judge, I often had rent appeals, where the landlords claimed from the tenants rent calculated on the basis of half the produce of the land during the previous three years. What is the position of the tenant in such cases? He may in the first year sow paddy on the land. In the second year he may sow paddy on half the land and jute on the other half. In the third year he may sow mustard or other things. Such a tenant might in common language be called a bargadar, but since he was sued for rent for three years, calculated on the basis of

half the produce of the land, I should say that he was certainly a tenant. And if the Settlement Officers find a man holding land for a long time under such circumstances, should they record him as a bargadar? In such cases I submit that he should be considered as a tenant on payment of a rent in the shape of half the produce on the land and the settlement records show him as such. In these circumstances there is no reason why the settlement records should be attacked in this way.

Maulvi SYED NAUSHER ALI: In opposing this amendment I will just state a few points. I can quite understand the object of the mover. He wants that nothing contained in the record-of-rights shall give a cultivator under the system known as adhi, barga or bhag any tenancy right. That is quite understandable. But in his speech he wanted something more. He suggested that such persons should not be allowed to have the benefit of the presumption which the record-of-rights gives them, and they should not be entitled to take advantage of section 103B of the Bengal Tenancy Act. That is an attitude which I cannot understand. Sir, if I may refer to that point now, we have seen that as a result of the amendment of Babu Jogindra Chandra Chakravarti, one of the general provisions of the Evidence Act has been departed from in the case of bargadars, namely, the bargadar has been restricted to the admissions in the document he executed as regards his tennacy right. Now, here is another attempt to deprive the bargadar of another general provision and to create an exception in favour of the person who is superior to him in knowledge, intelligence and in wealth and power; I mean the landlord. If protection is to be given to anybody, that protection should be given to the weak and the poor who cannot protect themselves. I am not asking any favour or privilege on behalf of the bargadar, but what I do ask is that he should not be deprived of the general provisions of the law that already exist in his favour and that applies to all. My second point is this: when I was making my submission with regard to my amendment regarding the recognition as tenants all bargadars who have been recorded as such in settlement records. I asked Sir Provash Chunder Mitter whether the settlement papers should be treated as waste papers so far as the entry regarding bargadars as tenants was concerned and he said "certainly not." But if the amendment is carried, then so far as bargadars are concerned the settlement papers will be mere waste papers. My third point is this: the mover stated that he could testify to the fact that bargadars are not tenants. It is no use his testifying to this fact in the House. When occasion arises we may testify to it in court. My fourth point is that if the settlement record-of-rights be admitted in evidence it will be impossible for the owner to prove that he was a tenant. The court in that case would have to decide whether he was a tenant or

not, and if it be impossible for the landlord to prove that he is bargadar pure and simple the court should and must declare him as a tenant. Fifthly, the mover has stated that neither party intended to create a tenancy; that simply begs the question and is arguing in a circle.

The Honble Sir PROVASH CHUNDER MITTER: I am afraid this amendment is based upon a misconception. First, the fundamental misconception involved in this amendment is that the mover thinks that the words "adhi, barga and bhag" had a clear and specific meaning before we defined these words in this Bill. We all know that these words have no legally defined meaning. We also know that there can be no difference of opinion that there are many adhiars and bargadars who are not really tenants and that there are many others who are tenants. The object of the mover is that anybody who has been recorded in the record-of-rights as adhiars or bargadars must be held not to be tenants so that the past records-of-rights are to be treated as mere waste-paper. The fundamental misconception is that there is no legal meaning attached to these words. Supposing a Settlement Officer enquires in the field and makes other summonses and then enters a particular person in the record as a tenant, then under section 103B the presumption of correctness will arise. It is nothing more than a mere rebuttable presumption and every one can come to the court and prove that although a particular person has been recorded as a tenant he was merely a labourer. Will it not be taking away the vested rights of many if we accept the sweeping generalisation involved in this amendment in its present form? Supposing there is a document and in that document the landlord acknowledges a bargadar as a tenant and the settlement records record him as a tenant, even that entry according to this amendment will not raise a presumption of correctness.

Sir, I do not want to enter into a discussion as to whether we should support the bhadrolok or we should support the cultivators. Sir, I do strongly urge on the House not to confiscate vested rights. Supposing there is a record in favour of bargadars that he was really a tenant and that entry has stood for a number of years and beyond the period of limitation, then if the amendment in its present form is accepted, there will be no presumption even for correctness, although by operation of rules of limitation the right has been perfected. I think my lawyer friends on the other side will consider the matter seriously and then decide whether to withdraw or press the amendment. The effect of this amendment will be that throughout Bengal wherever a man has been recorded as a tenant or a bargadar labourer that record will be merely a piece of waste-paper.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I desire only to make one statement with regard to the amendment which is under discussion. I should think that the Government itself is responsible for an amendment of this kind. In the Special Committee's report the gentlemen who signed the report definitely stated that the bargadars who have been recorded as tenants in the record-of-rights—even those bargadars would not have the status of tenants. In fact that is why some of the members of this House have been led to think that some provision ought to be made in order to make the provision definitely clear. Now as we know the intention of the framers of the Bill is that those bargadars who have been recorded as tenants will have the status of tenants, I think that from that point of view this amendment is unncessary. At one time myself and several members of my party thought that we would press it. Now, Sir, having regard to section 103B, I quite appreciate the difficulty of the situation and complications in law which may arise if this amendment is accepted in its present form. In that view of the matter I think the best course would be not to press the matter.

The motion of Babu Surendra Nath Biswas was then put and lost.

The following amendment was called but not moved:—

Mr. SYED MD. ATIQULLAH to move that at the end of clause 4 (*h*) the following shall be added, namely:—

"(*21*) A bona fide agriculturist" means "an actual tiller of the soil."

Khan Bahadur Maulvi EKRAMUL HUQ: I move that for clause 6 the following shall be substituted, namely:—

"6. For section 8 of the said Act the following shall be substituted, namely:—

'When a court passes a decree for enhancement the court shall think that an immediate increase of rent would produce hardship and when the court finds that the amount of profit left to the tenure-holder is less than 20 and more than 10 times the amount he pays to his superior landlord as yearly rent, the court shall direct that the order of enhancement of rent do take effect 12 years after the passing of the decree and the amount enhanced be spread over to another 12 years by equal instalments reaching the maximum after the 24 years of the decree, and in case where the profit left to the tenure-holder is less than 10 times and more than 5 times the amount he pays to his superior landlord as rent, the court shall direct that the order of enhancement shall take effect 25 years after the passing of the decree for enhancement and the amount enhanced to be similarly spread over to another 25 years, and in case where the

profit left to the tenure-holder is less than 5 times the amount he pays to his landlord, the decree to take effect 60 years after it is passed.' "

I have moved this amendment because I think that it is high time that we should no more think of enhancing the rents of the tenure-holder. Government has fixed the rent of the landlord and that the rent of the tenants and tenure-hoders have been ever on the increase so much so that it has reached an unweildy figure which it is not possible in some cases for the tenants to pay. Still the law is kept wide open to burden them further. In order to stop amendments giving relief to the tenants from being passed into law there has grown a strong block of Government and the zamindar members with their newly-found allies, the Swarajists, and acting to oppose the amendment. I know my amendment will not succeed in a Council which represents money and moneyed-men mostly.

The section on enhancement has not directly come within the scope of this Bill and as such I cannot move that the section on enhancement be effaced from the statute book.

What I am precluded from doing directly under the law I have in the interest of the tenure-holders in the province attempted to do in my motion indirectly while keeping myself within the rules relating to amendments. I ask Government why should they be anxious to enhance the rents of the tenure-holders, some of whom can trace their origin in ages past, which only benefits zamindars while the rents of the zamindars remain for ever fixed, and the State which is another name for the people themselves do not derive any benefit from the huge income which the landlords derive from the land. My amendment proposes that there should be no enhancement and, if it be carried, I hope no landlord will ever think of raising the rents of the tenure-holders when he finds that under the law he will possibly derive the benefit of a law suit for enhancement many years after he is dead and gone, buried or burnt. My amendment is a salutary check on the greed of the zamindars and I trust that if the Swarajists and Government do actually care for the tenure-holders, they will whole-heartedly support it.

Mr. JOGESH CHANDRA GUPTA: Sir, I could not catch the learned mover of this amendment when he was mentioning about the Swarajists and the Government acting in combination. What particular matter he was referring to I could not catch. But if the Khan Bahadur thought that we were going to combine against his compelling the court to think in a particular way I plead guilty to that charge. I thought that in legislation we provide what the court shall do or shall not do. But I do not think it is possible by legislation to make the court think in one particular way and not to think in another. If it is not the printers' devil the amendment reads.....

Mr. PRESIDENT: Please be merciful and do not read the amendment in full. (Laughter).

Mr. JOGESH CHANDRA GUPTA: I need not take up the time o the Council any longer. I will leave it to the Government benches and I would specially request Mr. M. C. Ghose, who had to judge certai cases, as to what he has got to say regarding the mode of thinking.

Mr. F. A. SACHSE: I do not think, Sir, that we need take seriously the proposal that when a court has decided an enhancement of ren to be overdue and equitable, its coming into effect should be postponed for 12 years or 25 years or 60 years. This clause relates to the rent o tenures, and the rents of tenure-holders are governed by contract. I oppose the amendment.

Mr. PRESIDENT: I think in putting this motion I had better spare my lungs and the patience of the House. (Laughter.)

6 p.m.

The motion of Khan Bahadur Maulvi Ekramul Huq was then put and a division taken by show of hands: the Ayes being only 4, the motion was lost.

Babu JITENDRALAL BANNERJEE: I move that in clause 14 (2) (*a*) at the end of proposed clause (*b*) (*ii*), the word "and" shall be omitted and after clause (*c*) the following shall be inserted, namely:—

"and

(*d*) shall be entitled—

(*i*) to plant,

(*ii*) to enjoy the flowers, fruits and other products of,

(*iii*) to fell, and

(*iv*) to utilize or dispose of the timber of any tree on the land comprised in his holding."

After what we have passed, I do not think there should be any objection to this; I understand there is no objection.

The Hon'ble Sir PROVASH CHUNDER MITTER: Subject to any drafting changes, we are willing to accept this amendment if it is accepted by the House.

The motion of Babu Jitendralal Bannerjee was then put and agreed to.

Babu JITENDRALAL BANNERJEE: I move that in clause 15 for the words "evidence against" in line 8 of the proposed section 18A the words "binding upon" be substituted.

My object is simply to place the landlords and tenants on the same footing. It has been provided that whatever appears in the landlord's records, that may be used as evidence against the tenant. I want to provide similarly that such documents as tenants may have should be permitted to be used as evidence against the landlords. The scope of my amendment is very modest. I do not say that statements appearing in instruments of transfer should be regarded as binding: I only contend that they should not be shut out altogether and that it should be left to the discretion of the courts as to what value is to be attached to them. I understand the difficulty perfectly: I understand that my proposal runs counter to the general law of the land which is against the advisibility of ex parte statements as evidence. But all the same, so far as the tenant is concerned, what better evidence can he produce than statements appearing in deeds of transfer? I do not say that such statements should be binding upon the landlord. But why should not the courts be permitted to look at them—seeing that ex parte statements appearing in the landlord's books may be used as evidence against the tenant?

Rai MAHENDRA NATH GUPTA Bahadur: I formally oppose this amendment. I do not think it is necessary to say anything. The words "evidence against" have been in existence in the Act since 1907, and have caused no difficulty. No change is necessary.

Mr. PRESIDENT: I may point out that the amendment which you read out was not the revised one. I may read out the revised amendment:—

"That to clause 15 the following shall be added at the end, namely: 'and in the section so substituted' and for the words 'evidence against' the words 'binding upon' be substituted."

It makes no difference.

Babu JITENDRALAL BANNERJEE: No, there is no difference.

The motion was then put and lost.

The following amendments were called but not moved:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, to move that in clause 20, to the proposed section 22 (*1*), the following proviso shall be added, namely:—

"Provided that in case there is an under-raiyat on such holding, his interest will not be protected unless he agrees to pay within two months of the merger a *salami* of eight times the rent which he was paying to the occupancy raiyat or of 30 per cent. of the value of the holding, whichever is greater."

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 20, to sub-section (*1*) of the proposed section 22, the following proviso shall be added, namely:—

"Provided that in case there is an under-raiyat on such holding, his interest will not be protected unless he agrees to pay within two months of the merger a *salami* of six times the rent whch he was paying to the occupancy raiyat, or 25 per cent. of the value of the holding, whichever is greater."

Maharaj KUMAR SRIS CHANDRA NANDY: I move that in clause 20, section 22, after the *Explanation* to sub-section (*3*), the following shall be added, namely:—

"(*4*) When the interest of a raiyat is extinguished in the manner aforesaid and there is an under-raiyat in the holding, the immediate landlord of such a raiyat shall treat the holding as abandoned, and the provisions of sub-section (*5*) of section 87 shall, *mutatis mutandis*, apply in respect to such a holding."

The clause as it stands does not provide for the cases of under-raiyats who may happen to come direct under the landlord, when the raiyati interest is merged. It is not proper that by the mere fact of the merger an under-raiyat should be promoted to a better right without paying anything for it. On the other hand, he cannot remain in his original status of an under-raiyat under a tenure-holder. As the number of under-raiyats will increase under the present law, the proposed amendment is necessary.

Mr. F. A. SACHSE: If the landlord buys a raiyati holding in a rent sale as the result of a rent decree, he has the right to turn out the under-raiyat. There is no need for this provision. If he purchases the holding amicably or in execution of a money decree, he simply steps into the shoes of the raiyat and he can get no better right than the raiyat had. Before he makes any purchase, it is his duty to find out whether there is an under-raiyat. If there is, he pays a smaller price, and there is no reason why he should have such a big advantage over any other purchaser and get a salami of six times the rent.

I oppose the amendment.

The motion of Maharaj Kumar Sris Chandra Nandy was then put and lost.

Maulvi NURUL HUQ CHAUDHURI: I move that to clause 21 the following shall be added, namely:—

(2) To the same section 23, the following sub-section shall be added, namely:—

"(2) Notwithstanding anything contained herein or in any contract, the raiyat shall be entitled to construct wells, tanks, or other works for storage, supply or distribution of water for the purpose of drinking and agriculture and to erect dwelling houses, outhouses, places of worship, such as mosques and temples, etc., whether of masonry, bricks, stone or other materials."

Section 23 is the general section which prescribes the rights of the raiyat in respect of the use of the land, but it is not exhaustive of the rights of the raiyats. I shall refer to section 76 of the Act which gives the raiyats further rights, but it is the subject to the condition that any other such rights which the raiyats may have under section 76 shall have to come within the description of an improvement. Under section 76 the raiyat is entitled to construct wells, dig tanks, water channels and other works for storage and supply or distribution of water for the purpose of agriculture or for the use of men and cattle. Because the rights given under this section were conditional upon this that it must come within the definition that it is an improvement, very few tenants in Bengal were allowed to excavate tanks which were necessary for the purpose of agriculture and for the purpose of household use. We all know that though this section is all along.....

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, may I rise on a point of order? As far as I can understand he is discussing section 76 which deals with improvement. He says that because section 76 qualifies something like digging of tanks and other things with certain qualifications and limitations.....

Mr. PRESIDENT: What is your objection?

Khan Bahadur MUHAMMAD ABDUL MUMIN: My objection is that he cannot discuss these things in connection with section 23. It is entirely out of order.

Mr. B. E. J. BURGE: If this amendment be carried then section 23 will be diametrically opposed to section 76. I, therefore, maintain that the whole discussion is out of order and he should not be allowed to discuss.

Mr. F. A. SACHSE: The objects of the mover are completely covered by some other amendments, namely, Nos. 999 to 1013. This amendment is in the wrong place. It is covered as I said, by other amendments which will come up later.

Mr. PRESIDENT: I rule the objection out of order. Mr. Chaudhuri can go on.

Maulvi NURUL HUQ CHAUDHURI: I am sorry, Sir, Mr. Sachse has not understood the meaning of my amendment. The whole point is this that if you give rights under section 76 the tenants will have to satisfy that these rights come within the definition of improvement and a great deal of litigation will consequently arise. Whenever a raiyat claims to exercise any of these rights as, for instance, the digging of tanks or wells the question at once arises before a court of law whether the expression "digging of tanks or wells came within the definition of improvement. It is because of section 76 and of the limitations imposed upon the rights of the tenants that in Bengal there is so much scarcity of water, and the ravages of cholera and other epidemic diseases have become a familiar feature of rural Bengal. I want to say that I would like to give the raiyats the right of digging wells and excavating tanks without any liability to be objected to by the landlords on any pretext whatsoever.

6-15 p.m.

Sir, it is an elementary necessity of human beings and we ought to recognise the principle that the raiyats should have an adequate supply of water for drinking and for agricultural purposes. My amendment proposes to give them the freedom to exercise their rights which it has hitherto been practically impossible without having recourse to litigation. Although section 76 has clearly recognised the principle of the rights, the tenants have signally failed to take advantage of this section. The proposal, which I am making, will transfer these rights from section 76 and incorporate them in section 23 by way of a proviso. This will meet the difficulties of the situation and will enable the raiyats to do these things without being subjected to harassment at the hands of the landlords. My proposal goes further than this—it gives the rights to the tenants to erect houses, mosques and temples whether of masonry, bricks, stone or other materials which they never had before. It must be within the experience of many in this House that not seldom a tenant who has built a mosque or temple has been compelled to pull it down under the orders of the court on the motion of the landlord. Whenever a tenant has built a small place of worship, such as a mosque or a temple, the practice has been for the landlord to get an injunction issued by the Court with the

result that in practically every case, unless the landlord is a man of piety, the tenant has not been able to erect such a place of worship. The position is that throughout Bengal there are a large number of kutcha mosques erected on the holdings of tenants and there is absolutely no security that the landlords will not on some occasion or other pull these down, because the law gives the tenant no right to build mosques and the landlord is entitled under the Act to exercise his right and pull down such places of worship. The exercise of such right by landlords has not infrequently led to riots and other disturbances of the public peace. Sir, it is an elementary right, which will be recognised by all persons and all parties whether such persons may happen to be landlords or Swarajists, that everybody has got the right to worship; and I hope the House will not deny this elementary right to subjects, whether they happen to be Hindus or Muhammadans. I plead for this right and I hope that the House will agree with me that, whatever the landlords may think to be their duty to themselves, there is a still higher duty which they owe to God (Hear, hear). We should do nothing to make it impossible for the tenant occasionally to have communion with his God which is necessary for the improvement of his soul. With these words, I commend my amendment to the acceptance of the House. I hope that my Swarajist friends who have been posing as patriots will give this small concession to the poor tenants. Sir, I do hope that the Council will accept this amendment on the broad ground that the principles of it have already been accepted in so far as section 76 goes; there is, however, this difference that if these rights be recognised in section 23 it will remove the possibility of further litigation. With these words, I commend my amendment to the acceptance of the House.

Mr. F. A. SACHSE: Sir, if you look at amendment No. 997, you will find that the proposal is to delete from section 76 the words "until the contrary is shown" and "presumed to be." If that amendment be accepted by the House, then clause (2) of section 76 reads as follows:—

"The following shall be improvements within the meaning of this section: construction of wells, tanks, water channels or other works for the storage, supply or distribution of water for the purposes of agriculture, or providing drinking water for the tenant, etc., and the erection of a suitable dwelling house for the raiyat and his family, together with all necessary out-offices."

Then, Sir, by amendment No. 1005, it is proposed to add after "out-offices," the words "including mosques or temples for providing facilities for worship to the tenant and men employed in agriculture." Therefore, there is no point at all in introducing these provisions in section 23.

Mr. PRESIDENT: I allowed this amendment because in section 23 it is definitely laid down that the tenant could not do anything which would impair the land; and Maulvi Nurul Huq Chaudhuri wants to provide, by his amendment, that a tenant will be able to do certain things, no matter whether the land is impaired thereby or not. The amendment is in order and it is for you to say whether you will accept or oppose it.

Mr. F. A. SACHSE: Sir, we are opposing the amendment.

The motion of Maulvi Nurul Huq Chaudhuri was then put and a division taken with the following result:—

AYES.

Aizal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazlul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Rahman, Maulvi Shamsur.
Rahman, Mr. A. F. M. Abdur.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Promotha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chaudhuri, Babu Pranendra Narayan.
Dash, Mr. A. J.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Gupta, Mr. Jagesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mittar, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sarker, Babu Naliniranjan.
Sen, Srijut Nagendra Nath.
Staplaton, Mr. N. E.

The Ayes being 15 and the Noes 47 the motion was lost.

Adjournment.

The Council was then adjourned till 2-45 p.m., on Friday, the 31st August, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Friday, the 31st August, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh) in the Chair, the Hon'ble Mr. A. Marr, the Hon'ble Sir Provash Chunder Mitter, the Hon'ble Mr. W. D. R. Prentice the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, Minister and 92 nominated and elected members.

Suggestions as to the order in which the amendments to the Bengal Tenancy (Amendment) Bill, 1928, may be taken up.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): I want to place before you, Sir, and the House my suggestion about the order in which the amendments may be taken up. It will be convenient to us if you proceed with Part IV next. The Muhammadan members have given us a draft affecting certain amendments in which they are interested. Then there are some amendments left over which are connected with sections 85 and 88 of the Act and these may be automatically settled when we deal with Part IV and come to know the views of the different parties with regard to these questions.

Mr. PRESIDENT: I have no objection to it.

Starred Questions.

(to which oral answers were given).

Syedpur Trust Estate.

*85. **Mr. SYED MD. ATIQULLAH:** (*a*) Will the Hon'ble Member in charge of the Department of Revenue be pleased to lay on the table a statement showing for the Syedpur Trust Estate—

(*i*) the present gross income;

(*ii*) the present nett income;

(*iii*) major heads of expenditure under the trust deed;

(*iv*) the major heads of the expenditure actually incurred at present; and

(*v*) the total amount of the trust fund that is in deposit?

(*b*) Will the Hon'ble Member be pleased to state whether any separate account is kept of the said trust fund?

(*c*) If so, will the Hon'ble Member be pleased to lay on the table a copy of the same?

The Hon'ble Sir PROVASH CHUNDER MITTER: (*a*) (*i*) The gross income of the estate during the year 1334 B.S. (1927-28) was Rs. 2,13,132.

(*ii*) The nett income of the estate during the above year was Rs. 54,334 (the annual contribution of Rs. 60,000 to the Mohsin Fund having been paid by utilising a portion of the cash balance of the previous year).

(*iii*) It was laid down in the Will of Haji Muhammad Mohsin that after payment of Government revenue, etc., for the estates bequeathed, the surplus proceeds thereof are to be divided into nine shares and appropriated as under:—

(*1*) Three shares for the performance of religious observances and festivals in the *Imambara* and the repairs of the *Imambara* and the Prophet's tomb.

(*2*) Two shares to be divided equally between the two *mutwalis* appointed by the Will for their use.

(*3*) Four shares for the *amlas* of the establishment and for payment of certain pensions and allowances.

(*iv*) The surplus proceeds of the estate (including the annual contribution of Rs. 60,000 made to the Mohsin Fund) are now divided into nine shares and appropriated as under:—

(*1*) Three shares are controlled by a Committee established under Act XX of 1863 for supervision of the endowment for religious purposes in accordance with the terms of the Will.

(*2*) One share is made over to the *mutwali* for the time being for his use.

(*3*) Four shares for the *amlas* of the establishment and for payment of certain pensions and allowances.

(*4*) One share *plus* the lapsed portion of the 4/9ths share mentioned above goes into a trust fund which is utilised for purposes of a beneficent nature mainly connected with advancement of Muhammadan education.

(*v*) The total amount held at the treasury on 31st March, 1928, was Rs. 5,211-8-5 and on 30th June, 1928, was Rs. 19,760-11-10.

(*b*) A separate account of the trust estate is maintained in the Manager's Office at Khulna in the manner prescribed for Ward's Estates.

(*c*) A copy is not readily available.

Maulvi ABUL KASEM: Will the Hon'ble Member be pleased to state if any money is contributed from the Mohsin Fund for the maintenance of schools and dispensaries in Khulna and, if so, from which share?

The Hon'ble Sir PROVASH CHUNDER MITTER: I do not know, but if the hon'ble member wants this information, I must ask for notice.

Khan Bahadur Maulvi AZIZUL HAQUE: Will the Hon'ble Member be pleased to state whether he is prepared to have a Committee of this House to enter into the question of the administration of this fund?

The Hon'ble Sir PROVASH CHUNDER MITTER: I am not prepared to answer this question offhand, and must ask for notice.

Maulvi ABUL KASEM: Will the Hon'ble Member be pleased to state if the difference between Rs. 2,13,000 and Rs. 54,000 is the land revenue of the estate?

The Hon'ble Sir PROVASH CHUNDER MITTER: Presumably it is land revenue and expenditure for other purposes. One is the gross income and the other is the net income.

Supply of drinking water to passengers on inland steam vessels.

***88. Dr. KUMUD SANKAR RAY:** (*a*) With reference to the reply to starred question No. 59 on the 15th August, 1928, will the Hon'ble Member in charge of the Marine Department be pleased to state what is the reason for not supplying filtered water to the 3rd and inter class passengers?

(*b*) Is there any rule which prevents the supply of filtered water to the 3rd class passengers?

(*c*) Will the Hon'ble Member be pleased to lay on the table a copy of the rules regarding the supply of water?

(*d*) What steps, if any, are taken to ascertain or ensure that the drinking water supplied to the 3rd class passengers is safe for drinking purposes?

MEMBER in charge of MARINE DEPARTMENT (the Hon'ble Mr. A. Marr): (*a*) The main reason is the difficulty of getting filtered water at terminal stations.

(*b*) No.

(*c*) A copy is laid on the table.

(*d*) Under the above rules, failure to supply fresh drinking water is a penal offence, but there is no machinery for the bacteriological testing of the water.

Rules referred to in the reply to clause (c) of starred question No. 86.

No. 68 Marine.—The 26th October, 1927.—In exercise of the power conferred by section 54, read with section 73 of the Inland Steam Vessels Act, 1917 (I of 1917), the Governor in Council is pleased to make the following rules for the supply of fresh drinking water to passengers on board inland steam or motor vessels:—

Rules.

1. A sufficient supply of fresh drinking water, being not less than ½ gallon per passenger carried, shall be stored in casks or iron tanks on every inland steam or motor vessel which plies for hire for passengers, to be supplied free of charge to the passengers.

2. Any owner or master of an inland steam or motor vessel committing a breach of this rule shall be punished with fine which may extend to fifty rupees.

Unstarred Questions

(answers to which were laid on the table).

Alleged proposal for redistribution of certain police-stations of Mymensingh.

69. Babu AMARENDRA NATH GHOSE: (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to state whether there is any proposal for excluding two police-stations, Nagarpur and Mirzapur, from the Mymensingh district and including the same in the Dacca district?

(*b*) If so, what are the reasons for redistribution?

(*c*) When is the proposal likely to be carried into effect?

MEMBER in charge of POLICE DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (*a*) No such proposal has been made either to Government or to the Commissioner of the Division.

(*b*) and (*c*) Do not arise.

Presidentship of Panchthupi Chaukidari Union Committee.

70. Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to state whether it is a fact that the Presidentship of the Panchayat in the Panchthupi Union in the district of Murshidabad has been held by the members of the same family since the system has been inaugurated?

(*b*) If the answer to (*a*) is in the affirmative, what are the reasons for this?

The Hon'ble Mr. W. D. R. PRENTICE: (*a*) The Presidentship of the Panchthupi Chaukidari Union Committee has been held by members of the same family since 1906. Information relating to previous years is not available.

(*b*) They were chosen as being the fittest men in the locality in consideration of their education, local influence and popularity.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state what is the educational qualification of the occupant of the presidential chair for the last 19 years?

The Hon'ble Mr. W. D. R. PRENTICE: I do not know.

Mr. JOGESH CHANDRA GUPTA: Is it a fact that there are other educated men, both Hindus and Muhammadans, resident within the union?

The Hon'ble Mr. W. D. R. PRENTICE: Presumably.

Mr. JOGESH CHANDRA GUPTA: Is it not a fact that there are other influential zamindars resident within that union?

The Hon'ble Mr. W. D. R. PRENTICE: I cannot say.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member be pleased to state what is the popularity which happens to be the monopoly of the occupant for 25 years.

The Hon'ble Mr. W. D. R. PRENTICE: I left the district 11 years ago, and I am sorry I cannot give detailed information.

Mr. KIRAN SANKAR ROY: Are these members nominated or elected?

The Hon'ble Mr. W. D. R. PRENTICE: Chaukidari presidents, as far as I remember, are nominated.

Mr. KIRAN SANKAR ROY: Will the Hon'ble Member be pleased to state when he has stated in his answer that they were chosen as being the fittest men in the locality, how is it that he does not know their educational qualifications?

The Hon'ble Mr. W. D. R. PRENTICE: I cannot claim to know the educational qualifications of every man in Bengal. If you want to know it, you must give notice. I gave a general answer and did not mention any particular qualification

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member take it from me that Babu Sushil Krishna Ghosh who was chosen for 19 years.....

Mr. PRESIDENT: That is not a question.

Mr. JOGESH CHANDRA GUPTA: Is it a fact that Babu Sushil Krishna Ghosh is not even a matriculate, though he was chosen as president for 19 successive years?

The Hon'ble Mr. W. D. R. PRENTICE: I do not know.

Mr. JOGESH CHANDRA GUPTA: Will the Hon'ble Member make an enquiry and let the House know if it is a fact?

The Hon'ble Mr. W. D. R. PRENTICE: If this question is asked, I shall enquire.

Select Committee Report on the Calcutta University Bill.

MINISTER in charge of DEPARTMENT of EDUCATION (the Hon'ble Nawab Musharruf Hosain, Khan Bahadur): The House decided that the Select Committee appointed to report on the Calcutta University Bill introduced by Dr. Pramathanath Banerjea should submit its report by the 31st August, that is, to-day. We have been holding meetings of the Select Committee for the last 5 days and their work is not yet finished. I hope the House will give us further time to submit the report, and I suggest that we should be permitted to submit it by the 15th October next.

Mr. PRESIDENT: The statement which has just been made by the Hon'ble Minister will be recorded.

Babu JITENDRALAL BANNERJEE: May I know, Sir, what is the exact statement which the Hon'ble Minister has made? I could not quite catch it, but I think he wanted an extension of time, but till how long we do not know.

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: Till the 15th October as I have already said.

Babu JITENDRALAL BANNERJEE: It is for the House to extend the time, and I suggest that the 30th September be fixed as the date within which the report should be submitted.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I beg to move that after clause 34 the following be inserted, namely:—

"34A. In section 52, sub-section (2), clause (*a*) of the said Act, after the word 'the' at the beginning, the words 'origin and' shall be omitted, and

(*ii*) after the word 'tenancy' the words 'at the origin or at any subsequent stage when the area and rent of the tenancy were adjusted,' shall be inserted."

I move this amendment in order to clear up at what time the conditions of tenancy will be consolidated. It is very difficult sometimes to prove the origin and even sometimes the tenancy is fixed after the subsequent settlement on a record-of-rights. In order to make it easier, I move this.

Babu BEJOY KRISHNA BOSE: On a point of order. It is a new clause which is not in the original Bill. Can he bring in a new clause that is not in the Bill?

Mr. PRESIDENT: You cast a doubt on my mind; what has the Government got to say on the point?

Khan Bahadur Maulvi AZIZUL HAQUE: So far as this sectic 34A is concerned, I mean amendment No. 935, it proposes to amend sul section (2) of section 52 which is not being amended at all. Is open to the member to bring an amendment with reference to sub-sectio (2) which is not a matter of this Bill?

Mr. PRESIDENT: Do you take similar exception, Sir Provash?

The Hon'ble Sir PROVASH CHUNDER MITTER: We do n mind either way. We have sometimes in the past accepted changes i parts of sections which strictly are not exposed, but it really depen on your view as to whether in view of the change that is proposed i the Bill, this exception can be allowed or not. We do not mind either way.

Mr. PRESIDENT: What I wanted to be cleared by the Hon'bl Member in charge of the Bill was as to whether this particular amen ment touches any section or any provision of the Act which has n been exposed by the amending Bill.

The Hon'ble Sir PROVASH CHUNDER MITTER: The position this: Under clause 6 which is being amended, we find this proposal "When in a suit under this section the landlord or tenant proves tha at the time of the measurement on which the claim is based was mad there existed in respect of the estate or permanent tenures, etc." No in the amendment No. 935 the words are "after the word 'tenancy the words 'at the origin or at any subsequent stage when the area an rent of the tenancy were adjusted' shall be inserted." That is in a earlier provision of the Act which is not being amended, but it ma be said as we want to lay down a rule under clause (6) which is sough to be or it may be argued the other way that ours is quit an independent proposal and our suggestion of amendment is embodie in clause (b) only, and that is why I find it rather difficult.

Mr. PRESIDENT: I allowed this amendment, but I cannot dra much strength from the statement of the Hon'ble Member to over rule the objection and maintain the amendment; the safest course fo me, therefore, would be to declare it out of order.

The motion of Maharaja Shashi Kanta Acharjya Chaudhuri wa then declared out of order.

The following amendment was also declared out of order:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Mukta gacha, Mymensingh, to move that after clause 34, the following b inserted, namely:—

"34B. In section 52 of the said Act in clause (d) of sub-section (2 after the words 'origin of the tenancy' the words 'or at any subsequen stage when the area and rent of the tenancy were adjusted' shall b inserted."

The following amendment was called out but not moved:—

Maulvi SYED NAUSHER ALI to move that for clause 35 the following shall be substituted, namely:—

"35. Sub-section (*6*) of section 52 shall be omitted."

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 35 the proposed sub-section 6 (*i*) shall be omitted.

I move this amendment on the ground that the Act as it stands is good enough, and that is the reason why I move for its omission.

In my amendment I also find a mistake, perhaps a printing mistake, and it should have been omission of the whole clause (*6*) and not only simply 6 (*i*). Amendment No. 937 was for the omission of the whole clause and mine was also to that effect.

Mr. PRESIDENT: I think you are wrong. It is all right as on the paper.

The following amendment was called but not moved:—

Maulvi TAMIZUDDIN KHAN and Kazi EMDADUL HOQUE to move that in clause 35, clause (*ii*) of the proposed sub-section (*6*) in section 52 shall be omitted.

Babu PRANENDRA NARAYAN CHAUDHURI: There is a conflict of judicial opinion as to the construction of the words "at the time the measurement on which the claim is based was made." In some cases the expression was held to refer to the measurement at the time of the original settlement. In a recent Full Bench decision it was held that it referred to the measurement which was made before the institution of the suit. It was necessary, therefore, to amend the section and to make the intention clear. It was considered necessary that there should be some provision for the proof of what the particular area in excess was, when the landlord was unable to indicate what particular land was held in excess, otherwise than by evidence of its specific existence in each case. The law as it stood before sub-section (*6*) was added did not contain any such provision. Sub-section (*6*) was, therefore, added in 1907 in Bengal and in 1908 in East Bengal. All the three Committees agreed that the amendment proposed in the Bill should be made. The Committee presided over by Sir John Kerr made this recommendation. It was accepted by the Select Committee and by the Special Committee as well. The presumption provided in the Bill will benefit both the landlord and the tenant. In the case of a tenant, if he asks for abatement of rent on the ground that the area is in defect, when the landlord claims that the land was settled at a lump rental, the tenant can take advantage of this presumption. The landlord can also get the benefit of this presumption. I, therefore, oppose the amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: In view of the statement, I ask for leave to withdraw the amendment.

The motion of Khan Bahadur Maulvi Azizul Haque was then, by leave of the Council, withdrawn.

The following amendments were called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that in clause 36, in sub-section (*1*) of the proposed section 54, the words "or tender" and the proviso shall be omitted and in sub-section (*2*) of the said section the words "or tender" and the last paragraph shall also be omitted.

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 36, in proposed section 54, in sub-section (*1*), in the proviso, line 2, after the words "for the year" the words "or part of the year" shall be inserted.

Maulvi KADER BAKSH to move that in clause 36, for the proposed section 54 (*2*) (*ii*) the following shall be substituted, namely:—

"(*ii*) by postal money-order in the manner prescribed by rules to be made by the Local Government on that behalf."

Babu JOGINDRA CHANDRA CHAKRAVARTI: I beg to move that in clause 36, for the proposed section 54 (*2*) (*ii*) substitute the following, namely:—

(*ii*) by postal money-order in the manner prescribed by rules made by the Local Government.

Section 54 provides for the time and place for the payment of rent where it is stated that the payment may be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord; or by postal money-order in the manner prescribed either generally or for any specified local area.

My object is to substitute those words "prescribed by rules made by the Local Government, etc." I do not want that there should be rules for a specified local area, but that there should be one set of rules for all areas prescribed by the Local Government for sending rent by postal money-order. It is with this object that I have moved my motion.

Mr. F. A. SACHSE: In section 3 the word "prescribed" is defined as meaning "prescribed by rules made by the Local Government under this Act." I do not see any difference between the wording used by Government and that suggested by the mover of the amendment.

The motion of Babu Jogindra Chandra Chakravarti was then put and agreed to.

The following amendments were called but not moved:—

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur, to move that in clause 36, in proposed section 54 (2) (*ii*), after the words "by postal money-order" the words "to the landlord or his common agent if any" shall be inserted.

Babu NAGENDRA NARAYAN RAY to move that in clause 36, in clause (*ii*) of sub-section (2), of the proposed section 54, the following words shall be added after the word "area," namely, "in the name of the common agent or gomasta to the village kutcheri or to the landlord in his sadar kutcheri or permanent residence."

Mr. BIJOY PRASAD SINGH ROY to move that in clause 36, in sub-section (3), the proposed section 54 be omitted.

Rai HARENDRANATH CHAUDHURI to move that in clause 36, in the proposed new section 54 (3), line 2, after the word "prescribed" the following words be inserted, namely, "and a certificate from the Post Office is produced to the effect that the money-order has been refused."

Babu JITENDRALAL BANNERJEE and Kazi EMDADUL HOQUE to move that in clause 36, in proposed section 54 (3), line 2, for the word "may" the word "shall" shall be substituted.

Mr. A. K. FAZL-UL HUQ to move that in clause 36, in sub-section (4), of the proposed section 54, the words beginning with "or that he was waived" up to the words "or 26J" be omitted.

Maulvi NURUL HUQ CHAUDHURI to move that in clause 36, to proposed section 54, the following shall be added namely:—

"(6) The landlord shall not refuse a tender of rent on the ground that the amount tendered is less than what is actually due, but the acceptance of rent tendered shall not preclude the landlord from claiming any balance that may be found due on taking of account."

Mr. BIJOY PRASAD SINGH ROY to move that clause 39 be omitted.

Maulvi NURUL HUQ CHAUDHURI to move that in clause 39, after the words "said Act," the words "for the word 'double' wherever it occurs, the words 'ten times and' shall be inserted, and" be inserted.

Maulvi TAMIZUDDIN KHAN to move that in clause 39, in the proposed sub-section (*9*), in section 58, for the words "rent or area" the words "rent, area or class" be substituted.

Kazi EMDADUL HOQUE to move that in clause 40 (*a*) for the words "then due" the words "for the period mentioned by the tenant in the application" be substituted.

Babu SACHINDRA NARAYAN SANYAL to move that in clause 40 (*b*) (*ii*), line 6, after the words "prescribed amount," the words "on every case of deposit of money in Court the Court shall send a notice of such deposit to the landlord by registered post" shall be inserted.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur, to move that in clause 40, after clause (*b*), the following be added, namely:—

"(*c*) at the end of section 61 the following be added, namely:—

'The landlord may at any time before and after the deposit of rent apply to the Court for realisation of penalty from the tenant on the ground that the rent has been so deposited without any reasonable cause and the Court should not allow the said tenant depositing the rent thereafter without producing the money-order receipt of the rent which has been refused by the landlord.'"

Khan Bahadur Maulvi EKRAMUL HUQ to move that clause 41 shall be omitted.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur, to move that in clause 42 the word "and" at the end of sub-clause (*c*), be omitted and after sub-clause (*d*) the following shall be inserted, namely:—

"and (*e*) after sub-section (*3*) as renumbered the following shall be added, namely:—

'Provided that a co-sharer landlord whose rent has been deposited in Court shall have the right to withdraw the amount due to himself for his share if he has separate collection of his share of rent.'"

Mr. BIJOY PRASAD SINGH ROY: I beg to move that in clause 43, section 64A, shall be omitted.

Sir, it is not to the interests of landlords to refuse rent, and the insertion of this clause with the offensive heading will only cause irritation. So I suggest that this section be omitted.

Mr. F. A. SACHSE: There are no reasons to answer for omitting this provision. If a landlord or his agent refuses to receive without reasonable cause payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages. It simply means that if a landlord goes to Court and sues the tenant for his rent after it has been sent to him by money-order, then he can get the rent itself, but he is not entitled to any interest, costs or damages.

In view of the proviso to this section, the only reason the landlord can have for refusing rent sent by money-order is that he wants to ruin the raiyat by the costly litigation. Hence, the new section is a perfectly fair provision in the interests of the tenant.

The motion of Mr. Bijoy Prasad Singh Roy was then put and lost.

3-15 p.m.

The following amendments were called but not moved:—

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur, to move that in clause 43, in proposed section 64A, line 1, for the word "agent" the words "common agent if any" shall be substituted.

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 43, in proposed section 64A, in line 7, the word "interest" shall be omitted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, Babu SACHINDRA NARAYAN SANYAL, and Maharaja JOGINDRA NATH RAY, of Nator, to move that in clause 43, in the proposed section 64A, lines 9 to 11, the following shall be omitted, namely, "and the Court may in addition award to the tenant damages not exceeding 25 per cent. on the whole amount claimed by the plaintiff."

Babu NAGENDRA NARAYAN RAY to move that in clause 43, in the first paragraph of the proposed section, for the word "may" the words "shall in every case" be substituted, and for the words "not exceeding 25 per cent." the words "not less than 50 per cent." shall be substituted.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I beg to move that in clause 43, in the proposed section 64A, line 8, for the word "may" the word "shall" shall be substituted. Sir, my "shall" is certainly not the same type of "shall" as that of Khan Bahadur Ekramul Huq. Sir, when it is decided by the Court that the landlord has refused to accept rent, there is no reason why this matter should be left to the

discretion of the Court, and I think that the penalty must be imposed. And that is why I have proposed that the word "shall" be substituted for the word "may".

The following amendments were called but not moved:—

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 43, in proposed section 64A (*b*), in line 10, for the figures "25" the figures "50" shall be substituted.

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 43, in the proposed section 64A, for the words and figures "25 per cent." in line 10, the words and figures "10 per cent." be substituted.

Mr. M. C. GHOSE: Sir, it is an extraordinary amendment. In the Civil Procedure Code there are hundreds of sections where the word "may" is used instead of the word "shall". A Court of Justice is left with a certain amount of discretion in such matters, so that while administering justice no injustice may be done. This is the reason, Sir, why the word "may" is used. I oppose the amendment.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and lost.

The following amendments were called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that in clause 43, in the proposed section 64A—

(*a*) after the first paragraph the following proviso shall be inserted, namely:—

"Provided that tenant before being allowed to make a deposit in Court shall have to satisfy the Court by the production of the postal money-order receipt that the landlord had refused to accept the rent tendered";

(*b*) the paragraph beginning with the words "The plea" and ending with the words "this section" shall be omitted; and

(*c*) for the words "Provided that" in the proviso the word "*Explanation*" shall be substituted.

Maulvi TAMIZUDDIN KHAN to move that in clause 43, in the second paragraph of the proposed section 64A, for the words "rent or area of land" the words "rent, area of land or class" shall be substituted.

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 43, in the proviso to proposed section 64A—

(*i*) in lines 2 and 3, the words "or remitted by postal money-order"; and

(*ii*) in lines 7 and 8, the words "or in the postal money-order form" shall be omitted.

New Clause 43A.

Babu NAGENDRA NARAYAN RAY to move that after clause 43 the following shall be inserted, namely:—

"43A. After section 65 of the said Act the following section shall be inserted, namely:—

'65A. When a rent decree is obtained, it being the first charge on the holding, the holding and the crops standing on it shall be attached and put up for sale at first and if all the amounts decreed are not realised, then only any other immovable or movable property of the debtor may be attached for the realisation of the balance unrecovered.'"

Maharaj Kumar SRIS CHANDRA NANDY: Sir, I beg to move.....

Mr. W. H. NELSON: On a point of order, Sir. This amendment is out of order.....

Mr. A. C. BANERJEE: On a point of order, Sir.....

Mr. PRESIDENT: Mr. Banerjee, Mr. Nelson is already on his legs on a point of order I shall hear what you have got to say after disposing of it.

Mr. W. H. NELSON: Sir, I claim that this amendment is out of order. Clause 44 of the Bill is an amendment of the Act: in substance, it is merely a formal amendment. The amendment proposed (No. 975) makes a change in substance which it is not open to the hon'ble member to do.

Mr. PRESIDENT: I quite agree with Mr. Nelson. This amendment escaped our vigilance. It is out of order.

Mr. PRESIDENT: What is your point of order, Mr. Banerjee?

Mr. A. C. BANNERJEE: I do not press it.

Mr. PRESIDENT: You have changed your mind then.

The following amendment was declared out of order:—

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 44 (*a*), line 1, after the words, brackets and figure "in subsection (*1*)" the words "before the words 'when an arrear' the words 'the rent of a tenure or holding shall be a first charge thereon' shall be inserted, and" shall be inserted.

The following amendments were called but not moved:—

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 44 (*b*), line 2, for the word "thirty" the word "sixty" shall be substituted.

Srijut NAGENDRA NATH SEN to move that in clause 44, the word "and" at the end of sub-clause (*a*), shall be omitted, and after sub-clause (*b*) the following shall be inserted, namely:—

"(*c*) after sub-section (*3*) the following proviso shall be added, namely:—

'Provided that it will be competent for a tenant always to deposit the amount or tender to the officer executing process before ejectment is made in execution of the decree.'"

Maulvi SHAMSUR-RAHMAN: I beg formally to move that in clause 44 to sub-section (*3*) of section 66 of the Act the following proviso be added:—

"Provided that it will be competent for a tenant always to deposit the amount or tender to the officer executing process before ejectment is made in execution of the decree."

Babu PRANENDRA NARAYAN CHAUDHURI: Sir, I formally oppose the amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, the amendment is to this effect:—

"Provided that it will be competent for a tenant always to deposit the amount or tender to the officer executing process before ejectment is made in execution of the decree."

So far as the principle underlying this amendment is concerned I support it. The only difficulty which I feel is with regard to the language used. And if you will permit me, Sir, to change the language in order to make it agree with the section, I shall do it. I propose to put the amendment in this way:—

"Provided that it will be competent for a tenant always to pay the amount with all cost to the officer executing process, or the decree-holder, before ejectment is made in execution of the decree."

The whole object of this amendment is this: This section which lays down that a tenant can be ejected for arrears of rent makes provision to the effect that a certain period of time, viz., 30 days, should be allowed by the Court for paying up the money, and if the tenant does

not pay up the money during this period, then the landlord gets a decree of ejectment. If the amount is paid up before the actual execution is made either to the executing officer or to the decree-holder, then the tenant will not be ejected. If my friend accepts this, we shall be quite prepared to support the principle of his amendment.

Mr. PRESIDENT: Maulvi Shamsur-Rahman, do you accept the amendment suggested by Babu Jogindda Chandra Chakravarti?

Maulvi SHAMSUR-RAHMAN: Yes, Sir.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I understand that Jogindra Babu wants to oppose the amendment of Maulvi Shamsur-Rahman as it stands, but that he wants to move a short notice amendment. (After seeing the amendment.) I am afraid, Sir, it will not do in this form; there may be some difficulty. Jogindra Babu, I am sure, will appreciate that under section 66 of the Act a month's time only is given, and after that period even the Court has no discretion, far less the executing officer. Jogindra Babu's amendment is—

> ".....to pay the amount with all cost to the officer executing process, or the decree-holder ....."

I am afraid I cannot accept this on short notice. If he had given notice of it earlier, we might have discussed it.

The motion was then put and lost.

The following amendments were called but not moved:—

Maulvi ABUL KASEM to move that Bill, clause 45, shall be omitted.

Mr. SYED MD. ATIQULLAH to move that for clause 45, the following shall be substituted, namely, "45, sub-section (*1*) of section 68 of the said Act shall be omitted."

Babu NAGENDRA NARAYAN RAY to move that at the beginning of clause 45 the following shall be inserted, namely:—

"In sub-sections (*1*) and (*2*) of section 68 of the said Act for the words 'twenty-five per centum' the words 'twelve and a half per centum' shall be substituted."

Khan Bahadur Maulvi AZIZUL HAQUE: In the absence of Maulvi Tamizuddin Khan, may I have your permission to move amendment No. 982 which stands in his name?

Mr. PRESIDENT: Have you taken his permission?

Khan Bahadur Maulvi AZIZUL HAQUE: He asked me to move all the amendments standing in his name.

Mr. PRESIDENT: I am quite prepared to accept your statement, and I permit you to move the amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I beg to move formally that in clause 45, in the proposed second proviso to sub-section (*1*) of section 68, clause (*ii*) shall be omitted.

Mr. BIJOY PRASAD SINGH ROY: Sir, I beg to move that in clause 45, in clause (*ii*) of the proposed proviso, line 1, for the word "may" the word "shall" be substituted.

Sir, the landlord's trouble clearly begins after he obtains the decree. I am not prepared to leave this matter to the discretion of the Court. It is only fair to the landlord that the word "shall" should be substituted for the word "may". If it were left to the discretion of the Court, I am almost sure that in 90 per cent. of the cases, the landlord will be deprived of his just dues.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, as regards amendment No. 982, I formally oppose it. The proposal in the Bill was first mooted by Sir John Kerr's Committee, and has been accepted by subsequent Committees.

As regards amendment No. 984, I may say that clause 45 is a penal clause, and it is always desirable that a certain amount of discretion should be left to the Court. As a matter of fact, in the corresponding section 64A, where a corresponding penal provision has been made against the landlord, the word "may" has been used. If that is a suitable term when the turn of the landlord comes, it should also be a suitable term when the turn of the tenant comes. With these words, Sir, I oppose this amendment.

The motions of Khan Bahadur Maulvi Azizul Haque and Mr. Bijoy Prasad Singh Roy were then put and lost.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 985-989.

3-30 p.m.

The following amendments were called but not moved:—

Mr. PROSANNA DEB RAIKAT, Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, Mr. SATYENDRA CHANDRA GHOSH MAULIK and Mr. BIJOY PRASAD SINGH ROY to move that in clause 45, proposed proviso (ii), line 3, for the words "at such rate as the Court directs" the words "at 12½ per cent. per annum" be substituted.

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 45, in the proposed proviso (*ii*), last line, after the word "rate," the following be inserted, namely:—

"not below 12½ per cent. per annum."

Babu NAGENDRA NARAYAN RAY to move that for clause 47, the following shall be substituted, namely:—

47. For section 73 of the said Act, the following section shall be substituted, namely:—

"73 (*1*) If occupancy raiyats owning a holding jointly divide the holding amongst themselves by agreement or such joint possession is disturbed by any division being effected by sale or any other sort of alienation of a part of any holding, they shall send notice to the zamindar specifying the respective lands of each share of the holding and the share of the rent payable thereon. After such notice, each of the tenants shall be liable severally to pay the rent thus assessed.

(*2*) If any one of such tenants makes a default in payment of the rent thus assessed on his share and a decree is obtained by the landlord in respect of such share for such arrears of rent, the defaulting share only shall be liable to be sold in execution of the decree and the landlord shall be bound to receive the rent from each share separately and to give rent receipts to each of the several tenants for his share of the land, but such receipt of rent will not prejudice his rights to proceed against the entire holding under sub-section (*3*).

(*3*) But if at the sale the price offered is less than the amount due, the landlord may apply to the Court to have the whole holding including the share of the tenants who have not made any default be put up for sale, and the Court shall order for a sale accordingly of the entire holding if any formal recognised partition or apportionment of rent is not yet made under section 88 or any other section.

(*4*) Where an entire holding is sold under sub-section (*3*), any one of the co-sharer tenants shall be entitled to deposit the amount due and thereupon such a deposit being made, the sale shall be stopped.

(*5*) Where a holding has been divided by the tenants in the manner specified in sub-section (*1*) and defaulting payment of rent is not made by the entire body of tenants, the landlord shall not be entitled to sue from the entire body of tenants

for the arrears of rent nor pnt up the entire holding for sale in execution of a decree for arrears of rent otherwise than in accordance with sub-sections (*2*) and (*3*).

73A. *Mutual exchange.*—Where several tenants combine to form a Co-operative Society registered under the Co-operative Societies Act, 1912, or any other organisation for the purpose of improvement of agriculture and for the consolidation of their jotes, each one of such tenants shall have the right to transfer his holding to such society or under the resolution of such society to any other member of such society and all such dealings in land as amongst the members of such society themselves or with the society shall be recognised by the landlord and the landlord shall not be entitled to any nazar or premium on account of such transfers of interest in lands."

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 47, in the proposed new section 73—

(*i*) for the words "an occupancy-raiyat" the words "a tenant," and for the word "holding" the words "tenure or holding" be substituted; and

(*ii*) in line 1, after the word "holding," the following be inserted, namely—"or a part or share thereof."

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: I move in the absence of Babu Manmatha Nath Roy in whose name the motion stands that in clause 47, proposed section 73, line 1, after the word "holding," the words "in whole or in part" shall be inserted.

(The member spoke a few words in support of his motion which were quite inaudible at the Reporter's table.)

Khan Bahadur MUHAMMAD ABDUL MUMIN: I think this amendment is quite unnecessary. Under section 73 the liability of the rent of the holding is upon the transferrer or the transferee after the transfer. The first part of the section describes as to who will be liable for the rent before transfer. The effect of the amendment will be that in the case of a transfer of a share of a holding the liability will be both upon the transferrer and the transferee. But, Sir, without such a change the liability exists. On principle, I may explain I am not opposed to the amendment. But what I say is that what is intended is already there, and so the amendment is quite unnecessary. I think after the explanation, the member will withdraw the amendment.

The following motion was put and agreed to:—

"That in clause 47, proposed section 73, line 1, after the word 'holding,' the words 'in whole or in part' shall be inserted."

The following amendments were called but not moved:—

Khan Bahadur Maulvi MUHAMMAD ISMAIL to move that in clause 47, in the proposed section 73, line 6, after the word "transfer," the following words be inserted, namely:—

"But the transferror will not be liable for any rent for any period after the transfer."

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur, and Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 47, the proviso to proposed section 73 shall be omitted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, to move that in clause 49, clauses (*a*) and (*d*) shall be omitted, and in clause (*c*), for the proposed clause (*f*), line 3, for the word "tenant," the word "raiyat" shall be substituted.

Mr. SYED MD. ATIQULLAH to move that in clause 49 after clause (*a*), the following shall be inserted, namely:—

(*aa*) in sub-section (*2*), the words "until the contrary is shown" at the beginning of the sub-section, and the words "presumed to be" shall be omitted, and after the word "section," the words "which a tenant or raiyat shall be entitled to effect" shall be added.

Kazi EMDADUL HOQUE to move that in clause 49 (*b*), in sub-section (*2*) (*a*) of section 76 of the Act, for the word "wells," the words "wells of all kinds" be substituted.

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 49 (*b*), in sub-section (*2*) (*a*) of section 76 of the Act, after the word "tanks," the words "of an area not less than one standard bigha" be inserted, and for the words "or providing drinking water for the tenant or for the use of men and cattle employed in agriculture," the words "or for domestic purposes" be substituted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, to move that after clause 49 (*a*), the following be inserted, namely:—

(*aa*) in clause (*a*) of sub-section (*2*), after the word "tanks," the words "of an area not less than one standard bigha" shall be inserted.

Babu AMARENDRA NATH GHOSE moved that in clause 49 (*b*), after the words "or providing drinking water for the tenant," the words "or for the benefit of other people" shall be inserted.

He spoke in Bengali, the English translation of which is as follows:—

Mr. President, I have moved this amendment with two objects in view. There are tenants who can afford to dig tanks, but they cannot do so without the permission of the lardlords. There are others who are unable to do so, even when the permission of the landlord has been obtained. The more the tanks will be excavated, the more the scarcity of water will be removed. Those who reside in villages can understand what the scarcity of water means. The residents of Calcutta would not understand it, so every facility will be given to the tenants to exacavate tanks.

So far as I know, the Government have not yet been able to make any arrangement to remove the scarcity of water. I do not know what the result is of their attempt to secure loans for this purpose. The object of my amendment is to facilitate the attempt of the villagers separately or in combination to excavate tanks.

It would be strange if it is arranged that the landlord is to grant his permission only in case when a tenant or agriculturist would use the tank, and the permission might be withheld if other class of people use the tank. The District Board might come to the help of the villagers in this respect if the landlord's permission becomes unnecessary. We should direct our attempts on that line. I am ready to accept any amendment coming from the side of the Government which will convey the spirit of my amendment.

The mover asked permission of the Hon'ble the President to alter the amendment by omitting the words "for the benefit of" from his amendment.

Mr. PRESIDENT: Has the Government any objection to this alteration?

The Hon'ble Sir PROVASH CHUNDER MITTER: We have no objection in accepting it in the altered form. The form in which we are willing to accept it is this: "or for providing drinking water," and omit the rest, so that it will serve everybody.

Khan Bahadur Maulvi AZIZUL HAQUE: May I point out the only difficulty in this case would be that if the water is drunk somebody will object to it.

The Hon'ble Sir PROVASH CHUNDER MITTER: We can have it in this way: "for the purposes of agriculture or providing drinking water," but we may leave the wording to the Legislative Department.

Mr. PRESIDENT: I find that it will be very difficult to get on if suggestions are going to be made in this fashion. I think the mover should have consulted the Hon'ble Member in charge of the Bill before moving his amendment in an altered form.

The Hon'ble Sir PROVASH CHUNDER MITTER: May I suggest, Sir, that we may consider the actual drafting for 10 or 15 minutes, after which time it may be put in the proper form.

Mr. PRESIDENT: I am always willing to accept amendments on short notice if I find that it will help matters. But what I object to is the unpreparedness of the parties to come to a decision quickly when the matter is actually brought before the House.

Mr. JOGESH CHANDRA GUPTA: With regard to the amendment, may I make a suggestion.....

Mr. PRESIDENT: The best course would be for the mover of the amendment to put the modified form of his amendment in the hands of the Hon'ble Member in charge of the Bill and come to a settlement with him as to what the altered form will be. It will then be for the House either to accept it or not.

The Hon'ble Sir PROVASH CHUNDER MITTER: I suggest that we may proceed with the other business in the meantime.

Mr. PRESIDENT: The best thing for Government in future would be not to say that they are willing to accept alterations proposed by a mover of an amendment, unless they are sure of it that something in definite shape or form, which meets with their approval, is before the House.

The Hon'ble Sir PROVASH CHUNDER MITTER: So far as Government are concerned, they are quite sure of their ground. We accepted what they wanted.

Mr. PRESIDENT: I am afraid, as nothing has yet been settled, I must postpone the consideration of this matter and proceed with the next item.

Mr. BIJOY PRASAD SINGH ROY: I beg to move that after clause 49 (*b*), amending clause (*a*) of sub-section (*2*) of section 76, the following shall be inserted, namely:—

(*bb*) to the same clause (*a*) of sub-section (*2*) the following shall be added, namely:—

"Provided that the tank, water channel or other work for the storage, supply or distribution of water, is not in size disproportionate to the area of the tenancy in which it is made, and is not less than 10 cottahs in area."

Sir, my amendment speaks for itself and my reasons for moving it are obvious, and I do not think I need say anything.

Mr. B. E. J. BURGE: I do not think it necessary to oppose this amendment at great length. Clause (*2*) of section 76 makes it clear that "until the contrary is proved, the following shall be presumed to be improvements within the meaning of this section," and it is impossible to say in terms of the amendment what is disproportionate. It should be left to the Court to decide whether a particular tank, well, or water-channel is disproportionate in size to the holding and whether it is an improvement or not. I oppose the amendment.

The motion of Mr. Bijoy Prasad Singh Roy was then put and lost.

Babu AKHIL CHANDRA DATTA: I beg to move that after clause 49 (*b*), the following shall be inserted, namely:—

"(*bb*) to clause (*a*) of sub-section (*2*) the following shall be added, namely:—

'*Explanation.*—Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy.'

Sir, I shall explain the reasons as to why I move this amendment. Excavation of a tank certainly makes the agricultural land unfit for the purpose of tenancy; there can be no doubt about that. But there is also a provision for ejectment if the land is used in such a way as to make it unfit for the purposes of agriculture and impair its value. That being so, it is just possible that an interpretation may be put on sub-section (*2*) of clause (*a*) according to which it may be contended that if we excavate a tank on a piece of agricultural land, then that would not be an improvement. It will be an improvement only when you excavate a tank on a homestead land. I do not say that that would be a reasonable interpretation, but it is just possible that there may be a construction upon which an interpretation cannot be placed for ejectment. Therefore, to make the position absolutely clear, I propose

that it should be expressly stated here that such construction on agricultural land as distinguished from homestead land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy. The utmost that may be said is that it is not necessary. I quite see that, but yet in order to safeguard against all possible misconstruction, I propose that this amendment be accepted.

Mr. B. E. J. BURGE: I oppose this amendment. The mover has provided the best argument in its favour and I quite sympathise with his purpose, but I would say that there may be cases where the provision of a tank or construction of a well may not be absolutely necessary and may impair the value of a particular holding. As the word "improvement" has been used in the section, I think it would be very much better to leave it to the Court to decide whether there has been an improvement on the land or not.

The motion of Babu Akhil Chandra Datta was then put and a division taken with the following result:—

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Naueher.
Bagahi, Babu Remes Chandra.
Banerjee, Babu Promatha Nath.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Bose, Babu Bejay Krishna.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ghose, Babu Amarendra Nath.
Ghuznavi, Alhadj Sir Abdelkerim.
Gupta, Mr. Jagesh Chandra.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Naeker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Khan Sahib Abdus.
Sen, Srijut Nagendra Nath.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Banerjee, Mr. A. C.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Faroqui, Khan Bahadur K. G. M.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Lala, Babu Saroda Kripa.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Momin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.

Prentice, the Hon'ble Mr. W. D. R.
Rahman, Mr. A. F.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Reid, Mr. R. N.
Ray, Mr. Bijoy Prasad Singh.
Sachse, Mr. F. A.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

The Ayes being 42 and the Noes 36, the following motion was carried:—

That after clause 49 (*b*), the following shall be inserted, namely:—

"(*bb*) to clause (*a*) of sub-section (*2*) the following shall be added, namely:—

'*Explanation.*—Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy.'"

The following amendment was called but not moved:—

Khan Bahadur Maulvi MUHAMMAD ISMAIL to move that in clause 49 (*c*), in proposed clause (*f*), line 3, after the words "whatsoever," the words "and the manufacture of these materials for the purpose" shall be inserted.

Maulvi ASIMUDDIN AHAMAD: Sir, in the absence of Maulvi Tamizuddin Khan, may I have your permission to move the following amendment. I have got my friend's permission to move the amendment.

Mr. PRESIDENT: Yes, you may move it.

Maulvi ASIMUDDIN AHAMAD moved that in clause 49 (*c*) in the proposed clause (*f*), in sub-section (*2*) of section 76, the following shall be inserted after the words "out-offices," namely:—

"including mosques or temples for providing facilities for worship to the tenant and men employed in agriculture."

He spoke in Bengali in support of the motion, the English translation of which is as follows:—

Sir, I do not think that it is necessary to say much on this motion. The matter is necessary to both Hindus and Moslems, and I regret that Government have not put it in section 76. The tenants are given the right to construct pucca buildings for the purpose of dwelling houses and out-offices under this section, but it does not say anything about houses for religious worship. Is it possible that the tenants will worship in thatched huts while they live in pucca houses? I think that Government's omission to make any provision to this effect is due to oversight, and I hope that Government, my Swarajist friends and the zamindars will unanimously accept this amendment.

Mr. B. E. J. BURGE: Sir, I beg to oppose this amendment formally, because I do not know whether the mover was present here last evening when we discussed this motion fairly thoroughly in connection with Maulvi Nurul Huq Chaudhuri's motion relating to clause 23. I do not propose, therefore, to waste the time of the House by going over the same grounds again.

The motion of Maulvi Asimuddin Ahamad was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Ali, Mr. Altaf.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Maulvi Nurul Huq.
Faroqui, Khan Bahadur K. G. M.
Ghuznavi, Alhadj Sir Abdelkarim.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Hussain, Maulvi Latafat.
Karim, Maulvi Abdul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur.
Rahman, Mr. A. P.
Rahman, Mr. A. P. M. Abdur.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarkar, Rai Sahib Rebati Mohan.
Sattar, Khan Sahib Abdus.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Promatha Nath.
Banerjee, Mr. A. C.
Basu, Babu Saci Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jegindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
James, Mr. F. E.
Lala, Babu Sarada Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

The Ayes being 23 and the Noes 58, the motion was lost.

The following amendment was called but not moved:—

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur, to move that in clause 49 (*c*) the word "and" at the end of proposed clause (*f*) to section 76 (*2*) shall be omitted, and the following proviso shall be inserted, namely:—

"Provided that in the case of pucca structures and excavation of tanks, the tenant will pay reasonable nazar amounting to 10 times the annual rent."

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 1007 and 997(*2*).

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that for clause 49 (*d*), the following shall be substituted, namely:—

"(*d*) Sub-section (*3*) shall be omitted."

Sir, after the amendment which was moved by my friend, Babu Akhil Chandra Datta, was carried in this Council, I do not see any necessity for retaining this proviso clause. There would have been some meaning if this amendment were not carried; otherwise, as it stands, it has got no meaning; for it has been decided by the amendment that the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for purposes of agriculture will not depreciate the value of land. Now, Sir, you will find from sub-clauses (*b*) to (*f*) there is nothing which can depreciate the value of the land, because the preparation of land for irrigation, the drainage reclamation from rivers or other waters, etc., the reclamation clearance enclosure, etc., the renewal or reconstruction of any of the foregoing works, etc., and the erection of a dwelling house, whether of masonry structure, etc., can never be considered to depreciate the value of the land. I do not think, Sir, that if my amendment be accepted, any depreciation of the land will be caused, and I think that unless Government be absolutely obstinate, my amendment ought to be carried.

Maulvi NURUL HUQ CHAUDHURI: I beg to move in the absence of Mr. Syed Md. Atiqullah in whose name the motion stands that in clause 49, for clause (*d*), the following shall be substituted:—

"(*d*) sub-section (*3*) shall be omitted."

The motion was put and lost.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I beg to oppose the amendment, in spite of Khan Bahadur Azizul Haque's advice to us to the contrary. This clause, as a matter of fact, has not

made any change in the section which has existed in the Act from before. It is not a proviso, but a substantial part of the section. It definitely declares that nothing will be improvement if it substantially reduces the value of the land; for instance, if a tenant takes out earth from a place in such a way that the place does become neither a tank nor fit for cultivation, it certainly diminishes the value of the land. As Akhil Babu's amendment has been carried, a clause like this is necessary. I, therefore, oppose this amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: My friend, Khan Bahadur Azizul Haque, has said that because motion No. 1003 has been accepted by the House, therefore it necessarily follows that sub-section (*3*) of section 76 need not stand. Well, Sir, I think it is necessary for me to say a few words with regard to the explanation which has been added to the motion of Babu Akhil Chandra Datta. The explanation merely says that such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy. It has been explained by Akhil Babu in the course of his speech that what he means is that it may not be argued in any case that all these works of improvement which are mentioned here are intended to be made only on homestead land and not on agricultural land, because it may be argued that an agricultural land is made unfit for purposes of agriculture if tanks are excavated on it. Sub-section (*3*) of section 76 relates to a matter which is entirely different from what is contemplated by this proposed explanation. Sub-section (*3*) says: "But no work executed by the tenant of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property." That is entirely a different matter. It means that if, instead of a tank or well or anything of the kind mentioned in the sub-clauses, a tenant digs a small doba or things of that kind, the effect of which is to diminish the value of the land, then it cannot be considered to be an improvement within the meaning of section 76.

4-15 p.m.

Therefore, the mere fact that the explanation has been accepted by the House does not mean that this amendment should be accepted. And in that view, I oppose this amendment.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and lost.

Mr. PRESIDENT: I shall now take up amendments Nos. 1008 and 1011.

Khan Bahadur Maulvi EKRAMUL HUQ: Mr. President, Sir, I beg to move that in clause 49 the word "and" at the end of clause (*c*) shall be omitted, and the following shall be added after clause (*d*), namely:—

"(*e*) after sub-section (*3*), the following shall be added, namely:—

'*Explanation.*—When for sinking a well or a tank or draining for irrigation or making a dwelling house, whether of masonry, bricks, stone or any other material whatsoever, the tenant has to dig earth from a portion of his holding, the value of the holding shall not be considered to have substantially diminished for the purposes of the Act.'"

Sir, the tenants have the right to make improvements on their holdings, but the uncertainty of the law makes it possible for bad zamindars to pounce upon the tenants and undo the good things the tenants do and may further harass and oppress them. This is the reason why Government have made provision in this Bill in clear terms as to what should be considered improvements. I think it is the intention of Government to see to it that litigation which has been in vogue hitherto actually ceases to exist. This being so, I think they ought also to remove any clause which may throw open the doors of litigation. Clause (*3*) of section 76 of the Act is of a nature which will make many persons go to the Law Courts and bring about the ruin of the masses of this province. The section reads thus:—

"No work, executed by the raiyat of a holding, shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property."

A bad landlord may come forward and file a suit in a Court of Law and say that such and such acts of the tenant have substantially diminished the value of a holding. This will necessitate that either the tenant should fight out the case with the landlord or compromise the whole matter with him by paying some nazar. This is not what the Government actually want, and this is not what, I think, any member of this House wants. And that is why I have laid down my amendment in clear and explicit terms. They actually want that only in cases where the value is substantially diminished that the landlord should have right to eject the tenant or sue him for damages. I submit that in cases in which the tenant tries to improve his holding and for that purpose has to dig earth, certainly such action on his part cannot be considered to diminish in the least the value of the land. On the contrary, the tenant raises the value of the land by these improvements. This being the case, if my amendment is accepted by Government, I am perfectly sure that there will not be the least chance of any litigation after the passing of the Act. Sir, it may be urged by the Hon'ble Member in charge of the Bill that the drafting of my amendment is

not good. But I would say that if Government are prepared to accept the principle of this amendment, I am quite prepared to accept any change in the wording which they might propose.

Sir, it has been said by one of the leaders of the Swarajya Party—I mean Babu Jogindra Chandra Chakravarti—that the tenants will dig dobas everywhere in the name of improvement. I fail to understand the logic of his assertion. Why should the tenants dig dobas? Will these yield them anything substantial? If they dig the dobas, they dig them for their own use, say for erecting dwelling houses. And anyone who takes over the house will have the benefit of the doba for washing purposes and for rearing fish. It will certainly not deteriorate the value of the land, and you cannot object on that score. If you still persist in saying that the tenants will unnecessarily dig dobas everywhere, I can say that you are saying something which is imaginary, and which does not take place. If with a view to fighting imaginary dangers, you keep the gates of litigation wide open, you will simply hamper the tenants in their efforts to better their condition by improving their holdings. I trust the Hon'ble Member in charge of the Bill will look into this matter and see if he can accept my amendment which will for ever stop litigation.

The following amendment was called but not moved:—

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 49, the word "and" at the end of clause (*c*) shall be omitted, and after clause (*d*) the following shall be added, namely:—

and (*e*) after sub-section (*3*) the following shall be added, namely:—

"Provided that if the raiyat surrenders or abandons the holding, he will be debarred from claiming any compensation from the landlord for the buildings constructed by him.

Explanation.—The making of bricks by taking the soil from the lands of the holding shall be deemed to substantially diminish the value of the landlord's property."

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, whether a particular act is or is not an improvement is a question of fact. Khan Bahadur Ekramul Huq wants that the taking away of earth from any place within a holding, for making bricks for building purposes or for other purposes, should not be considered to deteriorate the soil in any way. On the contrary, according to him, this should be considered as an act of improvement. Well, if it is a high plot of land, then taking away of earth from it sometimes makes it fit for cultivation. On the other hand, if earth is taken away from paddy fields and low-lying lands, which otherwise would yield crops, then those lands become absolutely useless. In such a case it is not an improvement: it is

simply deteriorating the land. Further, the Khan Bahadur does not specify in his amendment that the building of a dwelling house or the sinking of a well or tank should be on the same holding from which earth is taken. Suppose, Sir, a man digs earth from a plot of land in Ballygunge for the purpose of building a house at Karaya, will not the land at Ballygunge deteriorate? As I said, it is a question of fact, and the Court will decide each case on its merits. I submit, Sir, an explanation like the one proposed will be prejudicial to the interests of both lands and tenants.

The motion was then put and a division was called.

Mr. PRESIDENT: In order to save the time of the Council, before I ask the House to divide, I would ask the supporters of Khan Bahadur Ekramul Huq's amendment to raise their hands.

More than 10 members having raised their hands, the House divided with the following result:—

AYES.

Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiquilah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Farequi, Khan Bahadur K. O. M.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Khan Chaudhuri, Mr. M. Ashraf Ali.
Khan, Khan Sahib Maulvi Muazzam Ali.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Premotha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejay Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Dr. Bidhan Chandra.

Roy, Mr. Bijay Prasad Singh.
Roy, Mr. B. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sashee, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 18 and the Noes 63, the motion was lost.

The following amendment was called but not moved:—

Babu AKHIL CHANDRA DATTA to move that in clause 49(*c*) to the proposed clause (*f*), the following shall be added, namely:—

"*Explanation.*—Dwelling house for the purpose of clause (*f*) of sub-section (*2*) means all buildings for dwelling and agricultural purposes, and includes compound walls, privy and ghatla."

[At 4-30 p.m. the Council was adjourned and it reassembled at 4-40 p.m.]

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: In the absence of Rai Harendranath Chaudhuri, may I have your permission to move the amendment which stands in his name?

Mr. PRESIDENT: Are you doing so with the permission of the member who sent in the amendment?

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: Yes, Sir.

Mr. PRESIDENT: Yes, you can move it.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: I beg to move that in clause 49, after sub-clause (*d*), the following be added:—

"(*e*) to sub-section (*3*) the following words shall be added:—

'and no work executed by an under-raiyat under this section shall make his interest protected under clause (*c*) of section 160.'"

Under section 48G(*3*) the interest of an under-raiyat is not protected, but the interest of an under-raiyat shall be deemed to be so protected under section 160 (*c*) if we allow a tenant to construct a pucca

house or building, etc., under section 76 (*d*) of the present Act; it comes under section 160 (*c*) of the Bengal Tenancy Act which runs thus: "any lease of land whereon dwelling houses, manufactories, etc., have been made shall be deemed to be protected interests." So these two clash with each other. The right which is taken away in section 48G is reinstated in section 76 of this Act. So the principle that we have accepted in section 48G(*2*) is neutralised by section 76. Therefore, in order to be consistent as to the right of the under-raiyat, the amendment I have proposed may be inserted. I hope Government will accept it.

Rai MAHENDRA NATH GUPTA BAHADUR: I beg to oppose this amendment, firstly, because it really means making an exception to section 160 (*c*) of the Act which we have not reached yet and about which no amendment has been put and, secondly, because if section 160 (*c*) gives protection to an under-raiyat who has made a masonry house we do not see any reason why that protection should be taken away. After all the distinction between a raiyat and an under-raiyat in this respect is an artificial one, and many under-raiyats under the provision of the law which is going to be passed will have rights approaching very much the rights of an occupancy raiyat. For these reasons, as well as for the simple reason that an under-raiyat if he has been able to build a masonry house is as much entitled to protection as any other tenant, we do not consider that any exception should be made. We, therefore, oppose this amendment.

The motion of Rai Satyendra Nath Roy Choudhuri Bahadur was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Premethe Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Bose, Babu Bejay Krishna.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Nafizar Rahman.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Faroqui, Khan Bahadur K. G. M.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nandy, Maharaj Kumar Srie Chandra.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijay Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Nalinikanjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Afzal, Maulvi Syed Mohammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ghose, Mr. M. C.
Gilchrist, Mr. R. N.
Gordon, Mr. A. D.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hegg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan, Khan Sahib Maulvi Muazzam Ali.
Marr, the Hon'ble Mr. A.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Parrett, Mr. F.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Sarker, Rai Sahib Rebati Mahan.
Sattar, Khan Sahib Abdus.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordeworth, Mr. W. C.

The Ayes being 42 and the Noes 46, the motion was lost.

5 p.m.

The following amendments were called but not moved:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, to move that to clause 49 (*d*), the following shall be added, namely:—

and after this sub-section the following proviso shall be added, namely:—

"Provided that nothing in this section would prevent an under-raiyat to make any improvement if he does so with the previous consent of the raiyat's landlord, conveyed by a written and registered instrument."

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 49 (*d*), after sub-section (*3*) of section 76 of the Act, the following proviso be added, namely:—

"Provided that nothing in this section would prevent an under-raiyat to make any improvement if he does so with the previous consent of the raiyat's landlord, conveyed by written and registered instrument."

Rai HARENDRANATH CHAUDHURI to move that in clause 50 (*b*), line 2, for the word "tenant" the words "raiyat and under-raiyat with occupancy right" be substituted.

Babu SACHINDRA NARAYAN SANYAL, Maharaj Kumar BRIS CHANDRA NANDY, Srijut NAGENDRA NATH SEN, Maharaja JOGINDRA NATH RAY, of Nator, and Maulvi SHAMSUR-RAHMAN to move that clause 50 (*c*) shall be omitted.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur, to move that in clause 50 (*c*), in the proposed sub-section (*3*) to section 77, the words "except the nazar provided in section 76 (*f*)" shall be inserted before the words "any fee realised."

Mr. PROSANNA DEB RAIKAT to move that clause 51 be omitted.

Rai HARENDRANATH CHAUDHURI to move that for clause 51 of the Bill, the following be substituted:—

Amendment of sections 78, 82, 83 and 87.

51. (*a*) In sections 78, 82 and 83 of the said Act, for the word "raiyat" wherever it occurs, the words "raiyat or under-raiyat with occupancy right" shall be substituted.

(*b*) In section 87 of the said Act, for the word "raiyat" wherever it occurs, the words "raiyat or under-raiyat" shall be substituted.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 51, last line, after the word "under-raiyat" the words "with a right of occupancy" shall be inserted.

Babu SARAL KUMAR DUTT to move that in clause 51, line 3, after the word "under-raiyat," the words "with a right of occupancy" be inserted in section 78 of the Act.

Mr. PROSANNA DEB RAIKAT to move that clause 52 be omitted.

Srijut TARAKNATH MUKERJEA, Rai HARENDRANATH CHAUDHURI, Mr. PROSANNA DEB RAIKAT, and Srijut BIJAY KUMAR CHATTERJEE to move that clause 54 be omitted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh: Sir, I pray that the following amendment which stands in my name may be put off for the present:—

That for clause 54 the following be substituted, namely:—

54. For section 85 of the said Act, the following section shall be substituted, namely:—

"85. If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord, unless made with the landlord's written consent."

Mr. PRESIDENT: Yes.

The following amendments were called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that for clause 54 the following shall be substituted, namely:—

54. In sub-section (*2*) of section 85 of the said Act for the words "nine years," the words "fifteen years" shall be substituted.

Mr. D. N. ROY to move that clause 55 be omitted.

Babu RAMES CHANDRA BACCHI: I move that for clause 55 the following shall be substituted, namely:—

55. After sub-section (*b*) of section 86 of the said Act, the following sub-sections shall be inserted, namely:—

"(*b1*) When there is an under-raiyat on the holding or part thereof, the landlord before entering under sub-section (*5*) after the whole holding or part thereof as the case may be, for the remainder of the term of the sub-lease of the under-raiyat, at the rent paid by him to the raiyat and on condition of the under-raiyat paying up all arrears due from the raiyat. If the under-raiyat refuses or neglects within two months to accept the offer, the landlord may avoid the sub-tenancy and enter on the holding and let it to another tenant or cultivate it himself as provided.

(*b2*) If an under-raiyat has—

(*a*) a right of occupancy in a holding or portion thereof, or

(*b*) been admitted in a document by the landlord to have a permanent and heritable right in his land, or

(*c*) been in possession of his land and a homestead thereon for a continuous period of twenty years, whether before or after or partly before or partly after the commencement of the Bengal Tenancy Amendment Act, 1928,

the landlord, before entering on the holding under this section, shall offer the whole holding or part thereof to the under-raiyat at the rent paid by him to the raiyat and on condition of the under-raiyat paying up all arrears due from that raiyat and a salami five times the aforesaid rent. If the under-raiyat refuses or neglects within two months to accept the offer, the landlord may avoid the sub-tenancy and may enter on the holding and may let it to another tenant or cultivate it himself as provided in sub-section (*5*)."

(The member spoke a few words in support of his motion which was quite inaudible at the reporters' table.)

Mr. F. A. SACHSE: Sir, there is no very great objection in principle to applying those provisions which now apply to abandonment

to surrender also. It was the original idea of Sir John Kerr's Committee. The later Committees thought, however, that sufficient protection had been given to the under-raiyat. If the under-raiyat does not give his consent, the surrender will be void. In all these cases of surrender, abandonment, etc., the under-raiyat gets what seems to us sufficeint protection. But if the House as a whole wants to have this long section put in, I do not think Government will have any strong objection.

The motion of Babu Romes Chandra Bagchi was then put and a division taken with the following result:—

AYES.

Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prametha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Bose, Babu Bejoy Krishna.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sen, Srijut Nagendra Nath.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Capelle, Mr. A.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Farequi, Khan Bahadur K. G. M.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. N.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Gordon, Mr. A. D.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Khan, Khan Sahib Maulvi Muazzam Ali.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nelson, Mr. W. H.
Parrett, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-Rahman, Mr. A. F.
Raikat, Mr. Prasanna Deb.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Babu Surendra Nath.
Ray Chaudhuri, Mr. K. C.
Reid, Mr. R. N.
Roy, Mr. Bijoy Prasad Singh.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Khan Sahib Abdus.
Sinha, Raja Bahadur Bhupendra Narayan.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 28 and the Noes 58, the motion was lost.

5-15 p.m.

The following amendment was called but not moved:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, to move that in clause 55, for the word "under-raiyat," wherever it occurs, the words "under-raiyat with a right of occupancy" be substituted.

New clause 55A.

Mr. D. N. ROY to move that after clause 55, the following be inserted, namely:—

55A. After sub-section (*6*) of section 86, the following shall be inserted, namely:—

"(*6a*) For the purpose of sub-section (*6*), 'incumbrancer' does not mean and include an under-raiyat.

(*6b*) When there is an under-raiyat on the holding or portion thereof and the under-raiyat has—

(*a*) a right of occupancy in a holding or portion thereof, or

(*b*) been admitted in a document by the laudlord to have a permanent and heritable right in his land, or

(*c*) been in possession of his land and a homestead thereon for a continuous period of twenty years whether before or after or partly before or partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928,

the landlord shall, before entering on the holding under this section offer the whole holding, or part thereof, to the under-raiyat at the rent paid by him to the raiyat and on condition of the under-raiyat paying up all arrears due from that raiyat and a salami of six times the aforesaid rent. If the under-raiyat refuses or neglects within two months to accept the offer, the landlord may avoid the sub-tenancy and may enter on the holding and let it to another tenant, or cultivate it himself as provided in this section."

Clause 56.

Babu JITENDRALAL BANNERJEE to move that in clause 56 the proposed section 86A (*1*) shall be omitted.

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in clause 56, in the proposed section 86A (*1*) (*i*), line 2, after the word "tenant," the words "ceases to pay or" shall be inserted.

Rai HARENDRANATH CHAUDHURI to move that in clause 56, in the proposed section 86A (*1*), sub-clause (*i*), lines 3 and 4, for the words "obtains on that account exemption from," the words "has ceased to make" be substituted.

Maulvi NURUL HUQ CHAUDHURI: In the absence of Maulvi Tamizuddin Khan, may I have your permission, Sir, to move this amendment?

Mr. PRESIDENT: Did you get the consent of the member who gave notice of it?

Maulvi NURUL HUQ CHAUDHURI: Yes, I did.

Mr. PRESIDENT: Then you have my permission.

Maulvi NURUL HUQ CHAUDHURI: I formally move that in clause 56, in clauses (*i*) and (*ii*) of the proposed section 86A (*1*), after the word "account," the words "by means of a registered instrument" shall be inserted.

The following amendment was called but not moved:—

Kazi EMDADUL HOQUE and Babu AKHIL CHANDRA DATTA to move that in clause 56, in the proposed section 86A (*1*), line 12, after the words "the tenant shall," the word "not" be inserted.

Khan Bahadur Maulvi EKRAMUL HUQ: I formally move that in clause 56, in the proposed section 86A (*1*), in line 13, after the words "registered instrument," the word "not" shall be inserted.

I also formally move that in clause 56, in the proposed section 86A (*1*), last line, after the word "shall" the word "not" be inserted.

Mr. F. A. SACHSE: To make the position clear about this section 86A, the best thing I can do is to read the note of dissent by Rai Harendranath Chaudhuri to the report of the Select Committee. He said: "The proposed section 86A offers no solution to the questions of abatement or exemption of rent that arise out of the diluvion of the land of a tenure or holding. The new section of the Select Committee settles the law in one case only, viz., where the lands are wholly diluviated and the tenant "obtains exemption." But generally difficulties arise not in cases of total diluvion, but in the other cases of partial diluvion. Take, for instance, a case of partial diluvion where the tenant has accepted remission of rent. In such a case, when the land reappears, neither the tenant can identify his land which usually re-emerges with the lands of other holdings, nor the zamindars can settle the newly-formed lands with other tenants, lest the original tenant takes recourse to the plea of dispossession by the landlord in a suit for rent of the undiluviated portion. The proposed section offers no solution in such cases. Neither it will serve any purpose in the case where

the lands of a holding are wholly lost by diluvion but the tenant does not come forward to get an exemption. Acting in accordance with this advice, we have rejected the change made by the Select Committee and restored the section as it stood in Sir John Kerr's Bill. The whole point is when a river washes away land; if it washes away the whole holding, the tenant disappears and usually there is no difficulty. But if it washes away one particular plot of the holding, the tenant is there and claims the missing plot as part of any char that reforms. If the land accretes to any of his remaining plots, it is all right. The ordinary law of alluvion applies. But for the sake of peace in the mahal and to prevent rioting over chars, it is far better that when land has reappeared it should not be the business of the landlords or of the Kanungoes to identify the land. It causes endless confusion if anybody can come forward and say that this is his particular plot which was washed away 12 or 15 years ago. We, therefore, oppose these amendments and wish to keep the section as it is in the Bill.

The motions of Maulvi Nurul Huq Chaudhuri and Khan Bahadur Maulvi Ekramul Huq were then put and lost.

Babu NAGENDRA NARAYAN RAY: I formally move that in clause 56, in the proposed section 86A (*1*), clause (*ii*) be omitted.

Mr. F. A. SACHSE: The answer to this is exactly the same as I have already given. If clause (*ii*) be omitted, the section will be of no use in the class of cases which really give trouble.

The motion was then put and lost.

The following amendment was called but not moved:—

Babu NAGENDRA NARAYAN RAY to move that in clause 56, in the proposed section 86A (*1*), lines 14 and 15, the words "or portion thereof, as the case may be" shall be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE: I move that in clause 56, after the proposed section 86A (*1*), the following proviso shall be added, namely, "provided that if the landlord resettles such lands after reformation in situ with tenants, the old tenant shall have prior claim to take settlement at such rent or rate of rent as may seem fair and equitable and it shall be the duty of the landlord to notify the old tenant, his heir, representatives, or assignee to take such settlement."

I quite appreciate the difficulty involved in these reformations. But I think that if the tenant who lost the land comes forward to take a settlement of the char after it reformed, the landlord should offer to resettle with him at such rent or rate of rent as might seem fair and equitable.

Mr. F. A. SACHSE: Sir, there is practical difficulty. In theory, the amendment is all right; but these lands usually remain in the river for 3, 5, 20 or 50 years, and it would be impossible for the landlord to notify to the old tenant, his heir, representatives or assignee to come and take settlement of a bit of char land. The practical difficulty is that when a new char forms, it is almost impossible for the landlord to identify the plot.

Khan Bahadur Maulvi EKRAMUL HUQ: I rise to support this amendment. The Government Member has just stated that when the land reforms after diluvion, it is not possible for the landlord to notify the old tenant, his heirs, etc., of this fact. I think it is not at all necessary to send notices of such reformation, because if the tenants know that they will get back the land, and the law permits it, they will themselves come forward to make an application to the zamindar. I trust Government in the interest of the agriculturists will see to this that such a benefit is not denied to the tenants and that they are allowed to get the land back again.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I think in cases like these the tenant must trust to the generosity and good sense of the landlord. But you cannot compel the landlord to give back the land to the man to whom it belonged, as Mr. Sachse has just said, 50 or 100 years ago. The difficulty is about the identity of the land in most cases, and if we make a compulsory provision like this, it will lead to a lot of complication and litigation.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and lost.

The following amendments were called but not moved:—

Mr. BIJOY PRASAD SINGH ROY, Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, Mr. SATYENDRA CHANDRA GHOSH MAULIK, Babu NAGENDRA NARAYAN RAY, Maharaj Kumar SRIS CHANDRA NANDY, and Mr. PROSANNA DEB RAIKAT, to move that in clause 56, in the proposed section 86A, sub-section (*2*) be omitted.

Babu JITENDRALAL BANNERJEE to move that in clause 56 for the proposed section 86A (*2*), the following be substituted namely:—

"(*2*) Where the lands of a tenure or holding or any portion thereof have been lost by diluvion and the tenant obtains on that account exemption from payment of rent or abatement of the amount of rent, nothing in this Act shall prevent accrual of right on the part of the tenant by the operation of any other enactment if the land (or portion thereof) so lost by diluvion reforms in situ or reappears afterwards as an accretion to the tenure or holding."

Mr. SATYENDRA CHANDRA GHOSH MAULIK: I beg to move that in clause 56, at the end of the proposed section 86A, the following proviso be added:—

"Provided that Dahasala taluqs and Jungleburee Taluqs as mentioned in Permanent Settlement Regulations and those tenures which are governed by section 6 of the Bengal Tenancy Act and the tenures which were created on payment of capitalized value of rent in the shape of bonus are to be excluded from the operation of the above section."

The only reason for moving this amendment is that those tenures which were created on payment of capitalized value of rent in the shape of bonus should in all fairness be allowed to be excluded from the operation of this section.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I oppose the amendment. Obviously, we cannot be expected to make a special legislation for special taluks.

The motion was then put and lost.

5-30 p.m.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh: Sir, I beg to move that in clause 57 (*c*), clause (*b*) of the proposed sub-section (*5*) shall be omitted.

Sir, the reason for my moving this amendment is that if a raiyat can create an under-raiyati holding with permanent and heritable right and if on abandonment by the raiyat such an under-raiyat is to be offered the option of accepting the raiyat's place on payment of a salami of five or six times the rent as the case may be, then the intending purchaser would only take under-raiyati lease and do away with sale altogether. This will lead to many hardships.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I beg to oppose this amendment for the simple reason that practically it is consequential to what we have already decided on in section 48C, proviso (*1*), in which we have the same words, which are being objected to, namely, "been admitted in a document by the landlord to have a permanent and heritable right in his land." It is strictly out of order, and I do not think that I need say anything further.

The motion was then put and lost.

The following motions were called but not moved:—

Khan Bahadur Maulvi AZIZUL HAQUE to move that in clause 57 (*c*) in the proposed section 87 (*5*) (*b*), line 1, after the word "admitted," the words "or recognised" be inserted.

Babu SARAL KUMAR DUTT to move that in clause 57 (*c*), in the proposed section 87 (*5*) (*b*), for the word "document" the words "registered lease" be substituted.

Mr. BIJOY PRASAD SINGH ROY to move that in clause 57 (*c*) in the proposed section 87 (*5*) (*b*) for the words "the landlord" the words "the proprietor or the permanent tenure-holder" be substituted.

Maulvi SYED NAUSHER ALI: I beg to move only the first part of the amendment that stands in my name, which runs as follows:—

"That in clause 57 for clause (*c*) of the proposed sub-section (*5*) of section 87, the following shall be substituted, namely:—

(*c*) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon."

Sir, it is only a consequential amendment, and I hope it will be accepted by the House.

Rai MAHENDRA NATH GUPTA Bahadur: Sir, I beg to accept this amendment, subject to drafting changes. This is really consequential on what has already been decided on a previous amendment, I believe No. 842. As the second part has not been moved, I need not say anything about it.

The motion was then put and agreed to.

The following amendments were called but not moved:—

Khan Bahadur Maulvi AZIZUL HAQUE to move that in clause 57 (*c*), in the proposed section 87 (*5*) (*c*), lines 1 and 2, for the words "land and a homestead" the words "land or a homestead" shall be substituted.

Maulvi NURUL HUQ CHAUDHURI to move that in clause 57 (*c*), in proposed sub-section 87 (*5*) (*c*), lines 1 and 2, the words "and a homestead thereon" shall be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE to move that in clause 57 (*c*), in the proposed section 87 (*5*) (*c*), line 3, for the word "twenty" the word "fifteen" shall be substituted.

Babu MANMATHA NATH ROY: Sir, I ask your ruling as to whether the amendment which stands in my name is necessary or not, as we have already carried No. 1066.

Mr. PRESIDENT: Yes, the amendment does not arise.

The following amendment fell through:—

Babu MANMATHA NATH ROY to move that in clause 57 (*c*), proposed section 87 (*5*) (*c*), line 3, for the word "twenty" the word "twelve" shall be substituted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh: I move that in clause 57 (*c*) in the proposed section 87 (*5*)—

(*i*) in lines 15 and 16 after the words "rent paid by him to the raiyat" the words "or payable by the raiyat whichever is greater";

(*ii*) in line 18 after the word "salami" the words "of thirty per cent. of the value of the holding"; or

(*iii*) in line 18 after the words "the aforesaid rent" the words "whichever is greater"

shall be inserted.

Sir, the reason for moving this amendment is, as I said before, that the purchaser will take refuge under a lease and do away with the landlord's fee or salami.

Mr. F. A. SACHSE: Sir, we have accepted an amendment at the instance of the landlords, saying that the rent of an under-raiyat shall not be less than that of the raiyat. So I fail to see what the meaning of the first part of the amendment will be.

As regards the second part of the amendment, what is the value of an under-raiyati holding? There is no way of ascertaining it. So, we must stick to "six times" the rent as the basis of the salami.

I think, Sir, if my objections to parts one and two hold good, the third part of the amendment does not arise. I oppose the amendment.

The following amendments were called but not moved:—

Mr. PROSANNA DEB RAIKAT and Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 57 (*c*), in proposed sub-section 87 (*5*), lines 15 and 16—

(*1*) after the words "rent paid by him to the raiyat" the words "or payable by the raiyat whichever is greater" be inserted, and

(*2*) line 18 after the word "Salami" the words "of 25 per cent. of the value of the holding or" be inserted, and

(*3*) line 18 after the words "the aforesaid rent" the words "whichever is greater" be inserted.

Mr. BIJOY PRASAD SINGH ROY to move that in clause 57 (*c*), in the proposed section 87 (*5*), last paragraph, lines 3 and 4, after the words "paid by him to the raiyat" the words "or payable by the raiyat if the rent paid by the under-raiyat is less" shall be inserted.

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 57 (*c*), in the proposed section 87 (*5*), last paragraph, line 4, after the word "raiyat" the following words be inserted, namely, "or the rent payable by the raiyat to the landlord whichever is greater."

Babu SACHINDRA NARAYAN SANYAL to move that in clause 57 (*c*) in the proposed section 87 (*5*), last paragraph, in line 6, for the words "salami of six" the words "salami of ten" shall be substituted.

Babu ROMES CHANDRA BAGCHI: I move that in clause 57 (*c*), in the proposed section 87 (*5*), last paragraph, in line 6, for the words "a salami of six times the aforesaid rent" the words "a salami of five times the aforesaid rent" shall be substituted.

Sir, as this House has already accepted the principle of five times the annual rent, I think there will be no objection to accepting this amendment.

The following amendments were called but not moved:—

Maulvi TAMIZUDDIN KHAN to move that in clause 57 (*c*), in the proposed section 87 (*5*), last paragraph, line 6, for the words "salami of six times" the words "salami of three times" shall be substituted.

Maulvi SYED NAUSHER ALI to move that in clause 57 (*c*), in the proposed section 87 (*5*), last paragraph, line 6, for the words "six times" the word "half" shall be substituted.

Mr. B. E. J. BURGE: Sir, I oppose this amendment formally. There is no consequential change in the section at all, as a salami is never calculated as a certain percentage of the value. It was agreed that six times the rent was considered sufficient, and I do not see any reason why six times which is proposed in the Bill should not be maintained.

The motion of Maharaja Shashi Kanta Acharjya Chaudhuri was then put and lost.

The motion of Babu Romes Chandra Bagchi was then put and agreed to.

Mr. PRESIDENT: I propose to have Nos. 1080, 1081, 1082 and 1086 discussed together.

The following amendment was called but not moved:—

Babu NAGENDRA NARAYAN RAY to move that for clause 58, the following shall be substituted, namely:—

"58. For section 88 of the said Act as first enacted, the following shall be substituted, namely:—

'88. When two or more raiyats having joint possession over a holding either created by heirship or alignment of any kind

want to have their respective tenancy formally separated and legally recognised by the landlord, one or all of them are to apply to the Civil Court or to the Collector for due partition or apportionment of rent. The officer on receiving the application shall appoint a Commissioner to do the work and notify the landlord interested. The landlord or any of his duly authorised officers may regularly attend the work of division or apportionment of rent of the Commissioner and place their objections in writing. The Commissioner shall submit the final decision and report with the objection of the landlord. The Collector or the Munsif of the Civil Court shall decide finally and settle all the disputes and the different issues and his decision shall be final on the point and the landlord will be bound to recognise. In process of partition the Commissioner should take the best care not to subdivide pieces of land but try for their consolidation.' "

Mr. A. K. FAZL-UL HUQ: I beg to move that for clause 58, the following shall be substituted, namely:—

Ben. Act I of 1907.

" 58. For section 88 of the said Act as first enacted and for section 88 as modified by section 18 of the Bengal Tenancy (Amendment) Act, 1907, the following shall be substituted, namely:—

'88. A division of a tenure or holding or distribution of the rent payable in respect thereof shall take effect, as against the landlord, as soon the deed by which the division or distribution is effected has been registered.

The rent payable with respect to any share or shares of any tenure or holding shall be in accordance with the proportion of such share or shares to the entire holding or tenure.' "

Sir, I have tried to make the draft as simple and as self-contained as possible. My object in proposing this substitution is briefly this, that in cases of transfers of shares of holdings, unless it is provided by statute that the transferee shall get recognition as soon as the deed of transfer is registered, he shall have to go again to the landlord and pay again a salami and give the officers of the landlord a fresh opportunity of making as much exactions as possible. Thus, with a view to avoid all that, I suggest that as soon as the transfer is complete, everything else should be taken to have been completed, including also the recognition of the transferee by the landlord. Sir, I do not see what possible objection there can be to this proposal, because the percentage of salami that we have provided for is from all points of view extremely generous, and I think it will be unfair to the raiyats to leave the door open again for the officers of the landlord to exact money

for recognition after the transfer. It is for this reason, Sir, that I have proposed this amendment. With these words, I commend this amendment for the acceptance of the House.

Maulvi SYED NAUSHER ALI: I do not wish to move the amendment which stands in my name, but I wish to speak on Mr. Fazl-ul Huq's amendment.

Mr. PRESIDENT: You can speak, but not at this stage.

The following amendment was not moved:—

Maulvi SYED NAUSHER ALI to move that for clause 58 the following shall be substituted namely:—

"58. For section 88 of the said Act, as first enacted, the following shall be substituted, namely:—

'88. A division of a tenure or holding or distribution of the rent payable in respect thereof shall be binding on the landlord even though made without his consent, unless the landlord can prove that such division or distribution has caused material injury to the landlord's interest in property.

Explanation.—What is material injury will be a question of fact to be determined by the Court.'"

Maulvi NURUL HUQ CHAUDHURI: Sir, may I rise on a point of order? I gave notice of two amendments in connection with this matter, but I do not find them on the business paper.

Mr. PRESIDENT: Mr. Chaudhuri, you must have got these printed papers some time ago, and you could have enquired and ascertained why your amendments were not incorporated in the Appendices. Of course, I have not yet examined the matter, but I can tell you that probably your amendments were disallowed.

The following amendment was called but not moved:—

Maulvi TAMIZUDDIN KHAN to move that at the end of clause 58, after the words "as first enacted" the following be added: "and at the end of the section the following further proviso be added:—

'Provided also that the landlord shall be bound to recognise a division for which the entire body of co-sharer tenants make a joint application either to the landlord or his agent or in Court with a fee of five rupees payable to the landlord for such recognition.'"

5-45 p.m.

Babu NALINIRANJAN SARKER: Sir, I beg to move that at the end of clause 58 the following be added, namely, "and the following further proviso shall be added at the end of section 88, namely:—

'Provided further that (*1*) no division of a tenure or holding or distribution of rent shall be valid unless made with the consent of all the co-sharer landlords and co-sharer tenants and (*2*) also that when a landlord withholds his consent to the division of a tenancy or to the distribution of rent on the application of a tenant made on that behalf, or when a co-sharer tenant withholds his consent to such subdivision of tenancy or distribution of rent, or when a co-sharer tenant considers himself aggrieved by a division of the tenancy or distribution of the rent made by the landlord, the Civil Court may, on an application made on that behalf by the tenant within 6 months from the date of notice to the landlord hereinafter provided, by an order in writing direct such division of the tenancy or distribution of rent as it considers fair and equitable or annul or modify the division or distribution made by the landlord, if considered unfair and inequitable.

Nothing herein contained shall be deemed to authorise a Court to make an order for subdivision of the tenancy or distribution of rent—

(*i*) if the division results in the creation of unreasonably small holdings;

(*ii*) if the distribution of rent results in bringing the rent for any portion below Rs. 2-8 in case of holdings and Rs. 4 in case of tenures.

No Court shall make any such order without notice of the application made to it to all the landlords and tenants, and no such application as is provided for in this proviso shall be made without a notice of the same sent to the landlord or other co-sharer tenants or both as the case may be by registered post.

Every order of the Court directing division of the tenancy or distribution of rent shall also direct payment by the applicant to the landlord of a mutation fee being equal to twice the amount of rent made payable by the tenant in case of tenures and four times such rent in case of holdings.'"

Sir, my object in moving this amendment is this: When you have given a statutory recognition to the transfer of a portion of a holding, it is only fair and equitable that a subdivision of the tenancy as also a subdivision of the rent should be allowed. In my amendment the procedure has been laid down in such a way that while it gives relief to the tenant, it does not affect the interest of the landlord also. I have

made provision in the amendment that in the process of such subdivision of a tenancy the holdings cannot be unreasonably small, and the rent cannot be below a fixed sum. I have also provided for mutation fees in connection with this to be paid to the landlords to compensate them for collecting rents from a larger number of persons. I am sure the House will accept this amendment.

The following amendments were called but not moved:—

Babu AMARENDRA NATH GHOSE to move that after clause 58 the following shall be added, namely, "and the following proviso shall be added, namely:—

'Provided also that a co-sharer tenant of a tenure or holding may by an application to the Collector under section 88A have his share of the holding constituted a separate holding.'"

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR-RAHMAN to move that after clause 58, the following shall be added, namely, "and after section 88 the following further proviso shall be added, namely:—

'Provided that a sole landlord or an entire body of landlords shall be competent to subdivide the rents payable by the tenants in accordance with and proportionate to the tenants' shares in the subject of the tenancy, but not so as to subdivide the lands of the tenancy.'"

Maulvi ABDUL GOFRAN to move that after clause 58, the following be added, namely, "and to section 88 as so substituted, the following shall be added, namely:—

'Provided further that a tenant shall be entitled to institute a suit in a Civil Court for the recognition of division of a tenure or holding and the Court shall be competent to grant the relief prayed for when such division appears to be fair and reasonable.'"

Babu AMARENDRA NATH GHOSE to move that after clause 58, the following clause shall be inserted, namely:—

"58A. After section 88 of the said Act the following section shall be inserted, namely:—

'88A. (*1*) Any person who is a joint tenant of a tenure or holding paying not less than rupees four as the rent on his share may apply to the Collector to have his share of the holding declared a separate tenure or holding.

(*2*) On receipt of an application under section 88, the Collector shall issue notices on the landlords and other co-sharers of the tenure or

holding to show cause why the share of the applicant shall not be declared to be a separate tenure or holding and fixing a date for hearing objections.

(3) On the date fixed for the hearing the Collector shall hear both parties and if he is satisfied that the applicant has the interest in the tenure or holding claimed by him and that the rent payable by him is not less than four rupees, he shall declare that on the applicant depositing a fee of four times the annual rent the share of the applicant shall be declared to be a separate holding or tenure.

(4) The fee paid by the tenant under the order of the Collector under sub-section (3) shall be payable to the landlord in the same way as landlord's fee under section 12 or section 15.' "

Khan Bahadur Maulvi EKRAMUL HUQ: May I point out, Sir, that amendment No. 346 was not moved, as Mr. Sachse said that the proper time for moving it would be when section 88 was being considered?

Mr. PRESIDENT: Mr. Sachse, have you any objection to this amendment being discussed now?

Mr. F. A. SACHSE: I quite agree that amendment No. 346 should be discussed now.

Mr. PRESIDENT: Is that your amendment, Khan Bahadur?

Khan Bahadur Maulvi EKRAMUL HUQ: No, Sir, but I want to move it with your permission.

Mr. PRESIDENT: No, I cannot permit you to do that, as I do not know if the member who gave notice of it is unwilling to move it or have it moved by someone else.

Of the group of amendments under discussion, amendments Nos. 1081 and 1087 only have been moved, and they are now open to discussion.

Maulvi NURUL HUQ CHAUDHURI: Sir, I give my whole-hearted support to these two amendments. The principle underlying both these amendments is practically the same, except that amendment No. 1087 gives more details. Mr. Sarker's amendment will prevent too minute subdivision of holdings, to that extent it is a reasonable proposition.

(The member here spoke a few words which were quite inaudible at the reporters' tables.)

Sir, in my judgment, this is one of those provisions which are most urgently required, and will be appreciated by all classes of tenants. With these observations, I give my whole-hearted support to these amendments.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, this is a matter which was approached by everyone who had anything to do with it with the utmost sympathy. Ever since 1913, Government have been trying to find a solution for this problem. In Sir John Kerr's Committee, in the Select Committee and in the Special Committee, anxious attention was given in order to find a solution, but no just and equitable solution could be found. That being the position, I am afraid I must oppose these amendments. Sir, in the past, ever since the Bengal Tenancy Act was passed, this question has all along been automatically settled as a matter of adjustment; and if any of these amendments be accepted, let us consider what will be the result. Babu Naliniranjan Sarker has made a definite suggestion on one line and Mr. Fazl-ul Huq has made another definite suggestion on a different line. Let us examine each of the suggestions. I shall first of all take up Babu Naliniranjan Sarker's suggestion, because I think it will be easier for me to convince the House that if Mr. Sarker's suggestion be accepted, it will be a serious thing both for the tenant as well as the landlord. Mr. Sarker first of all suggests that no division of a tenure or holding or distribution of rent shall be valid unless made with the consent of all the co-sharer landlords and co-sharer tenants. Now, if the co-sharer landlords and the co-sharer tenants consent, then there is no difficulty: the whole thing is automatically settled. The language used may not after all be happy, and perhaps he has something else in his mind. In the second place, he suggests that when a landlord withholds his consent to the division of a tenancy or to the distribution of rent on the application of a tenant made on that behalf, or when a co-sharer tenant withholds his consent to such subdivision of tenancy or distribution of rent, or when a co-sharer tenant considers himself aggrieved by a division of the tenancy or distribution of the rent made by the landlord, the Civil Court may, on an application made on that behalf by the tenant within 6 months from the date of notice to the landlord hereinafter provided, by an order in writing direct such division of the tenancy or distribution of rent as it considers fair and equitable or annul or modify the division or distribution made by the landlord, if considered unfair and inequitable. Now this amendment as it stands means that clause (*1*) is the governing clause; and if it is so, clause (*2*) can never have any application. Let me, however, assume that this is due to a defect in drafting. But even then what will be the effect of this amendment? He wants a decision by the Civil Court. Well, the Civil Court will have to enter into the whole question in order to adjust the rights of the co-sharer tenant and the co-sharer landlord. Now, Sir, assume for the purposes of our consideration that the value of a particular plot of land is Rs. 100. Even the most extortionate landlord, after getting his first Rs. 20, will not, I think, ask for more than another Rs. 15 or Rs. 20. Even if he extorts 50 per cent., that will mean Rs. 30 more to the tenant. But there is an advantage to the landlord in allowing

a division. We know from experience that this means to the landlord better collection and, from the landlord's point of view, a subdivision is often desirable, but I need not pursue this argument further. I will assume that the landlord will extort another 20 or 30 rupees. I will ask the House to consider in all seriousness the kind of litigation Babu Naliniranjan Sarker contemplates, and the House will certainly come to the conclusion that such litigation will cost several times Rs. 50 or Rs. 100 not to speak of 20 or 30 rupees. It involves the appointment of a Commission, it involves engaging Pleaders, it involves the citing of witnesses, and all these will certainly cost Rs. 200 to Rs 300, if not more, not only to the tenants but also to the landlord. Just consider that if there are a number of co-sharer landlords and co-sharer tenants, it will be a very, very difficult matter to decide; and although from the point of view of abstract justice everything seems to be in favour of Mr. Sarker and Mr. Fazl-ul Huq's suggestions, as practical propositions the difficulties that will arise will be enormous. Therefore, I submit, that if the remedy is worse than the disease, it is much better to leave it to automatic settlement. No one, including the friends of the tenant—and amongst the friends of the tenant there are a large number of officers of Government—could find out a just and equitable and inexpensive solution. Nobody could find out a solution by which the cost would be less than that of an automatic adjustment. A suggestion was made that the matter should be decided by an officer of the Collectorate—a Settlement Officer or even a Kanungo. But even then, the parties will have to attend: some sort of evidence will have to be adduced.

6 p.m.

Sir, my friend Mr. Huq's amendment is this:—

> "A division of a tenure or holding or distribution of the rent payable in respect thereof shall take effect, as against the landlord, as soon as the deed by which the division or distribution is effected has been registered.
>
> The rent payable with respect to any share or shares of any tenure or holding shall be in accordance with the proportion of such share or shares to the entire holding or tenure."

Sir, mark the words "shall take effect." This looks a very good arrangement on paper—at any rate the second portion of it. We all know that different plots of a particular holding are not always of the same quality. It might operate not only as an injustice to the landlords but also to the co-sharer tenants. If Mr. Huq's amendment be accepted, if a particular tenant, who has sold his plot of land, has entered a very low rate of rent, then the balance will fall on the other tenant or tenants. It will operate as an injustice to the other tenants.

It will be an injustice to the landlord as he was not a party to the transaction. Surely, anyone with a sense of justice will not accept such an amendment. Therefore, we must oppose this, although I must say that our sympathy is with the movers of these amendments.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, we have heard from the other side of the House all the arguments advanced against these amendments But I am afraid we have not been convinced by them for the very simple reason that the distribution of rent by compromise will, I think, be a very much easier method. The landlord knows that the Court will somehow or other distribute the rents and so the landlord will naturally seek to compromise with the tenants. After all, I do not think that in view of the fact that we have driven the tenants to go so many times to the Court, there will be any harm to allow them to go to Court in this case also. The tenant will not naturally go to the Court; in the first instance, he will go to the landlord. But in a case where he finds that he gets no justice in the hands of the landlords, then his remedy of going to the Court should be provided for in the Bill. The Government has said that it has full sympathy with the object of these amendments. It is regrettable that the Government has not been able, in spite of its sympathy, to give actual relief in this clause, in spite of the help of the Legislative Department and in spite of the combined help of the Tenants' Party and the Swaraj Party. It is a pity that Government has not come forward with a substantial proposal of its own. The motion as drafted by the mover of the amendment is certainly not all what we desire but in the absence of any better, we have to accept it as a step gained.

Babu AMARENDRA NATH GHOSE spoke in Bengali, the English translation of which is as follows:—

"Mr. President, Sir, the object of the amendment is to facilitate the payment of rent by a tenant. The landlord will also be a gainer by this arrangement. So I hope both the parties will support it.

The custom that prevails at present is that after the transfer of a holding the tenant separates his portion of the rent by paying salami to the landlord at his discretion. The amendment wants to legalise this custom. Collection is facilitated by the distribution of the rent. The joint property is frequently liable to auction sale. Where there are co-sharer landlords, distress warrants are frequently issued to realise cess of the State. If the rent is proportionately distributed, the tenant will willingly pay his share of rent to the landlord to clear up his liabilities. In case of joint liabilities, nobody comes forward to pay the common dues. Everybody's case is nobody's case. It has been accepted by this House when a portion of a holding is sold that the purchaser has to pay salami at the rate of 20 per cent. to be acknowledged as tenant, but he will

have to pay rent jointly with the former tenants. The landlord might refuse to accept rent and then force the purchaser to pay him again for separation of his rent; the purchaser has to run again to the house of the landlord to pay salami to separate his account, otherwise he might be put to inconveniences by the landlord. To remove all these inconveniences, Nalini Babu has brought forward this amendment which provides that a tenant would be able to separate his portion of rent by paying even something as salami. A big tenure-holder in most cases stops payment when he is a co-sharer of a poor man. The poor co-sharer tenant naturally stops payment of his share. As the result, the holding is put to auction sale by the landlord, when the rich buy the holding of the poor. This puts poor co-sharer tenants to great loss and inconveniences.

I also think that if certain provision is made to separate the tenure and holding by paying certain salami, then in many cases this partition of rent, etc., will be made amicably instead of going to the Court. This arrangement will benefit the landlord and tenant."

Maulvi SYED NAUSHER ALI: I shall be very brief. Sir, I have no other alternative left open but to support the amendment of Babu Naliniranjan Sarker, though I do not approve of the principle underlying it, especially the payment of salami and so forth. The reason is this: It appears to me that a great injustice is being done to the transferees of portions or shares of holdings. It has been admitted that in the past these transferees had not to pay any salami or nazarana to the landlords. What the transferees had to do was that they had to pay something to the landlords who would at once recognise them as tenants and then they used to be recorded as separate tenants in the register. But now, Sir, under the present legislation even these transferees will have to pay the same amount of salami which the transferees of entire holdings would have to pay, and, over and above, these transferees will have to pay another amount four times or twice the rent as the case may be. Sir, situated as we are now in this Council, we have got to support this amendment. The reason, therefore, why I support the amendment is this: It is a choice between evils; the tenant will have an opportunity of having his jama kharajid. He may exercise it or he may not do it. When he finds it to his advantage, he will have his jama kharajid; when he does not find it to his advantage, he will not do so. It has been stated that the Government has been considering the proposal for years and years and no suitable solution has yet been found out. I regret the intelligent officers of Government could not find out a solution. Sir, if Mr. Fazl-ul Huq had bestowed a little more care on his amendment, it would have been one of the very best amendments which would, perhaps, have been accepted by the whole House. With these few words I support the amendment of Babu Naliniranjan Sarker.

6-15 p.m.

The motion of Mr. A. K. Fazl-ul Huq was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Atiqullah, Mr. Syed Md.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

NOES.

Bagchi, Babu Romes Chandra.
Banerjee, Babu Prometha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Sarat Kumar.
Ghose, Mr. M. C.
Gilchrist, Mr. R. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sarker, Babu Naliniranjan.
Sen, Srijut Nagendra Nath.

The Ayes being 15 and the Noes 42, the motion was lost.

The motion of Babu Naliniranjan Sarker was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Prometha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Maulvi Nurul Huq.
Datta, Babu Akhil Chandra.
Dutt, Babu Sarat Kumar.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.

Roy, Babu Manmatha Nath.
Roy, Dr. Bidhan Chandra.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sen, Srijut Nagendra Nath.

NOES.

Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan
Dash, Mr. A. J.
Ghose, Mr. M. C.
Gilchrist, Mr. R. N.
Gupta, Rai Bahadur Mahendra Nath.
Hegg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Reid, Mr. R. N.
Sashee, Mr. P. A.
Sarker, Rai Sahib Rebati Mohan.

The Ayes being 40 and the Noes 18, the motion was carried.

The following motions were called but not moved:—

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that at the end of clause 58 after the words "as first enacted" the following words be added: "with the addition, at the beginning of the section, of the words save as provided in Chapter V."

Khan Bahadur Maulvi MUHAMMAD ISMAIL to move that at the end of clause 58, the following words be inserted, namely, "with the addition of the words 'except in the case of transfer' after the words 'binding on the landlord' in lines 5 and 6 of the proposed section 88."

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur, to move that in clause 58, for the words and figures "section 88 of the said Act" the following be substituted, namely, "In section 88 of the said Act after the words 'duly authorised' the words 'in writing' shall be inserted, and the section as so amended and."

Maulvi KADER BAKSH to move that in clause 59, in the proposed section 93 (*ii*), lines 12 to 15, for the words "in case (*ii*)—

(*a*) more than half the tenants, or

(*b*) co-sharers holding more than half the aggregate interests in the estate or tenure;"

the following shall be substituted, namely, "in case (*ii*)—

(*a*) a considerable number of tenants, or

(*b*) any co-sharer of the estate or tenure."

Babu JOGINDRA CHANDRA CHAKRAVARTI: I beg to move that in clause 59, in proposed section 93 (*ii*), lines 12 to 15, for the words "in case (*ii*)—

(*a*) more than half the tenants, or

(*b*) co-sharers holding more than half the aggregate interests in the estate or tenure;"

the following shall be substituted, namely, "in case (*ii*)—

(*a*) a fairly large number of tenants, or

(*b*) any co-sharer of the estate or tenure."

Sir, this section 93 is in regard to the appointment of a common manager. Members of the House will be pleased to see that this section as it originally stood has been substantially altered by the present section in the Bill, and it is now laid down in clause (*ii*) when, owing to the existence of a large number of small co-sharers in an estate or tenure, the tenants or landlords are put to inconvenience and harassment in the payment or receipt of the rent due, the District Judge may, if it appears to him to be just and convenient, on the application of—

in case (*i*)—

(*a*) the Collector, or

(*b*) anyone having an interest in the estate or tenure or in any of the estates or tenures; and

in case (*ii*)—

(*a*) more than half the tenants, or

(*b*) co-sharers holding more than half the aggregate interests in the estate or tenure,

direct notice to be served on all the co-owners or co-sharers, calling on them to show cause why they should not appoint a common manager.

The amendment is to substitute for the words "more than half the tenants, or" the words "a fairly large number of tenants, or" and in the other case for the words "co-sharers holding more than half the aggregate interests in the estate or tenure," the words "any co-sharer of the estate or tenure." The object of the amendment is to make the operation of the section easy. In an estate having about one thousand or two thousand tenants, it may not be possible for more than half the tenants to come to the Court to make an application for the purpose of the appointment of a common manager, although it may be the case that owing to the existence of a large number of co-sharers the tenants or the landlords are put to inconvenience. Still having regard to the

fact that it may be practically impossible to make an application and in order to give facilities to the tenants to make application, I want to have the wording changed to "a fairly large number of tenants." Of course, Sir, it may be argued what is meant by "a fairly large number of tenants." It may be said that the expression is quite vague, but it is left to the discretion of the Court to consider what is a fairly large number of tenants. It is quite possible for us to imagine that one co-sharer alone may have interest to the extent of more than half, and if such a co-sharer is an influential co-sharer, he may be in a position to dominate over the other co-sharers, who may be put to harassment in case of dispute between themselves. In order to meet cases of this kind, I submit, that it will be more convenient if for the words which stand in the clause the words which I propose be substituted. I do not think that there need be any apprehension of any injustice or hardship being caused to any co-sharer or any tenant, because the second proviso says that on application being made, notices will be issued to other co-sharers who will have an opportunity of appearing before the Court which will, on a consideration of all the circumstances, judge as to whether or not a common manager should be appointed. On these grounds, I urge the amendment for the acceptance of the House.

Adjournment.

The Council was then adjourned till 10-30 a.m. on Saturday, the 1st September, 1928, at the Town Hall, Calcutta

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Saturday, the 1st September, 1928, at 10-30 a.m.

Present:

The Hon'ble the President (RAJA MANMATHA NATH RAY CHAUDHURI, of Santosh), in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Nawab Musharruf Hosain, Khan Bahadur, Minister, and 85 nominated and elected members.

Starred Questions

(to which oral answers were given).

Commutation of pensions.

*87. **Srijut TARAKNATH MUKERJEA:** (*a*) Is the Hon'ble Member in charge of the Department of Finance aware that the principle, under which commutation of pension rules are worked, is causing hardship to those in receipt of a small pension?

(*b*) Is it a fact that those pensioners are informed that their applications for commutation are dealt with in order of priority of their receipt by the Government, provided funds permit?

(*c*) Is it a fact that special consideration is always shown to the higher ex-officials?

(*d*) Is it a fact that the year's budgetted allotment is distributed amongst a limited few owing to the said special consideration?

(*e*) What is the date of receipt of the oldest pending application for commutation of pension?

(*f*) How many applications filed in—

(*i*) 1927-28, and

(*ii*) 1928-29

respectively are still pending?

(*g*) In how many cases preference was shown and what were the amounts of commutation money covered by each of them in—

(*i*) 1927-28, and
(*ii*) 1928-29

respectively?

(*h*) How many cases were dealt with strictly in order of priority, and what were the total amounts of commutation money covered by them in—

(*i*) 1927-28, and
(*ii*) 1928-29

respectively?

(*i*) Is it a fact that in the case of the employees of the Government of India commutation is not limited to any budget grant and they do not labour under any disadvantage in consequence thereof?

(*j*) If so, are the Government of Bengal considering the desirability of adopting the same principle?

(*k*) If the answer to (*j*) is in the negative, are the Government considering the desirability of dealing with applications for commutation of pension invariably in order of priority and of making adequate provision in the budget, so that the more needy pensioners are not kept waiting for long?

MEMBER in charge of DEPARTMENT of FINANCE (the Hon'ble Mr. A. Marr): (*a*) It is rather the lack of funds which prevents the commutation of many pensions being sanctioned at present.

(*b*) Yes.

(*c*) Under the Civil Pensions (Commutation) Rules framed by the Secretary of State, the members of certain services are entitled to commutation. The funds available have therefore to be utilised in granting commutation in such cases in preference to those who have no absolute right to commutation.

(*d*) The cost of compulsory commutation is a first charge on the year's grant. After meeting this obligatory expenditure, the budget allotment is utilised in sanctioning commutation of other pensions. This year, owing to limited funds, it has not been possible so far to grant commutation of any of these other pensions.

(*e*) 7th April, 1927.

(*f*) 1927-28—568.
1928-29—151.

(*g*) 1927-28—Compulsory commutations—12; value Rs. 3,65,912.
1927-28—Non-compulsory commutations—166; value Rs. 5,35,669.
1928-29—Compulsory commutations—11; value Rs. 3,13,282.

(*h*) 1927-28—166. Commuted value of pension—Rs. 5,35,669.

1928-29—None so far.

(*i*) It is understood that Government of India have adequate funds for commutation of pensions.

(*j*) The Government of Bengal can provide only a limited amount for this purpose.

(*k*) Compulsory commutations have to be granted. Other commutations are dealt with in order of priority. The question of increased budget provision next year will be considered in due course.

Dr. BIDHAN CHANDRA ROY: With regard to answer (*c*) there are certain high officials who belong to services which are entitled to commutation; does commutation depend upon higher or lower services or does that depend upon some particular services?

The Hon'ble Mr. A. MARR: Under the Secretary of State's orders all those services which are controlled by the Secretary of State are entitled to commutation.

Dr. BIDHAN CHANDRA ROY: Do they come first?

The Hon'ble Mr. A. MARR: Yes.

Entertainment tax on a musical performance alleged to be for the benefit of Détenus' Fund.

***88. Babu AKHIL CHANDRA DATTA:** (*a*) Will the Hon'ble Member in charge of the Department of Finance be pleased to state whether it is a fact that in January, 1928, a musical performance was held in Calcutta for the benefit of the Détenus' Fund?

(*b*) Is it a fact that the entire sale-proceeds of the performance went to the said Fund?

(*c*) Is it a fact that Government were informed by the organiser (or organisers) of the performance that the entire proceeds would be devoted to a charitable purpose, viz., the relief of the détenus and their families?

(*d*) Is it a fact that when the entire sale-proceeds of benefit performances are devoted to a charitable purpose, no amusement tax is levied?

(*e*) Is it a fact that in the case of the performance for the benefit of the détenus, a tax of over Rs. 570 has been levied on the sale-proceeds amounting to a little over Rs. 2,000?

(*f*) If the answer to (*d*) is in the affirmative, will the Hon'ble Member be pleased to state why an exception has been made in this case and amusement tax has been levied?

The Hon'ble Mr. A. MARR: (*a*) Yes.

(*b*) This is not known to Government.

(*c*) Yes.

(*d*) Under section 8 of the Bengal Amusements Tax Act, entertainments tax shall not be charged on payments for admission to any entertainment when the local Government are satisfied that the whole of the takings thereof are devoted to philanthropic, religious or charitable purposes without any charge on the takings for any expenses of the entertainments.

(*e*) Yes; tax has been charged but has not yet been paid.

(*f*) Because Government were not satisfied on the information before them that the requirements of the Act had been fulfilled.

Entertainment tax on a musical performance alleged to be for the benefit of Détenus' Fund.

*89. **Srijut JOGENDRA NATH MOITRA:** (*a*) Will the Hon'ble Member in charge of the Department of Finance be pleased to state whether it is a fact that in January, 1928, a musical performance was held in Calcutta for the benefit of the Détenus Fund?

(*b*) Is it a fact that the entire sale-proceeds of the performance went to the said Fund?

(*c*) Is it a fact that Government were informed by the organiser (or organisers) of the performance that the entire proceeds would be devoted to a charitable purpose, viz., the relief of the détenus and their families?

(*d*) Is it a fact that when the entire sale-proceeds of benefit performances are devoted to a charitable purpose, no amusement tax is levied?

(*e*) Is it a fact that in the case of the performance for the benefit of the détenus, a tax of over Rs. 570 has been levied on the sale-proceeds amounting to a little over Rs. 2,000?

(*f*) If the answer to (*d*) is in the affirmative, will the Hon'ble Member be pleased to state why an exception has been made in this case and amusement tax has been levied?

The Hon'ble Mr. A. MARR: (*a*) to (*f*) The member's attention is drawn to the answers to starred question 88.

Entertainment tax on a musical performance alleged to be for the benefit of Détenus' Fund.

*90. **Srijut RADHA GOBINDA RAY:** (*a*) Will the Hon'ble Member in charge of the Department of Finance be pleased to state whether it is a fact that in January, 1928, a musical performance was held in Calcutta for the benefit of the Détenus' Fund?

(*b*) Is it a fact that the entire sale-proceeds of the performance went to the said Fund?

(*c*) Is it a fact that Government were informed by the organiser (or organisers) of the performance that the entire proceeds would be devoted to a charitable purpose, viz., the relief of the détenus and their families?

(*d*) Is it a fact that when the entire sale-proceeds of benefit performances are devoted to a charitable purpose, no amusement tax is levied?

(*e*) Is it a fact that in the case of the performance for the benefit of the détenus, a tax of over Rs. 570 has been levied on the sale-proceeds amounting to a little over Rs. 2,000?

(*f*) If the answer to (*d*) is in the affirmative, will the Hon'ble Member be pleased to state why an exception has been made in this case and amusement tax has been levied?

The Hon'ble Mr. A. MARR: (*a*) to (*f*) The member's attention is drawn to the answers to starred question 88.

Dr. BIDHAN CHANDRA ROY: With regard to the questions which the Hon'ble Member has just replied the rules are that the takings should be devoted to philanthropic and charitable purposes. May I ask whether Government consider if that fund was devoted to any form of philanthropic work or not?

The Hon'ble Mr. A. MARR: Up to now the people who manage this fund have not produced any account whatsoever as to how the fund is being administered.

Dr. BIDHAN CHANDRA ROY: Will the Government be prepared to consider the matter when it is put before them as to whether this fund is devoted to philanthropic purposes?

The Hon'ble Mr. A. MARR: Certainly. We have already issued a letter to that effect.

Gangaghati Khal and Kalighai Escape Canal Scheme.

*91. **Babu MAHENDRA NATH MAITI:** (*a*) Will the Hon'ble Member in charge of the Department of Irrigation be pleased to state whether the Government are aware that the Gangaghati *Khal*, which is the upper portion of the Tikrapara *Khal*, the main drainage *khal* of the Barochowka basin, is obstructed by fishing nets and bamboo screens placed by the fishermen who take leases of fishery from the zamindars of Panchet?

(*b*) Is it a fact that the zamindars of Panchet were requested by Mr. Cook, the Commissioner of Burdwan Division, not to obstruct the *khal* by fishing instruments?

(*c*) Has the request been complied with?

(*d*) Is it a fact that the members of the Barochowka Flood Committee heartily support the Kalighai Escape Canal Scheme of the Government?

(*e*) Is it a fact that the neighbouring zamindars are opposed to the said scheme as a greater portion of their paddy fields will be acquired by the Government for digging the escape *khal*?

(*f*) Is it a fact that some of the zamindars have applied to the authorities against some respectable and prominent members of the Barochowka Flood Committee, stating that the members might cut the embankment of the Barochowka basin?

(*g*) Is it a fact that the local authorities have served notices under section 144 of the Indian Penal Code against them?

MEMBER in charge of DEPARTMENT of IRRIGATION (the Hon'ble Nawab Bahadur Saiyid Nawab Ali Chaudhuri, Khan Bahadur, of Dhanbari): (*a*) Obstruction is caused by fishing appliances; it is not known whether the fishermen obtain *pattas* from the Panchet zamindars.

(*b*) In January, 1923, Mr. Cook expressed doubt as to whether the removal of such obstructions merely from the upper portion of the Tikrapara *Khal* would do much good. It is not known if he addressed the Panchet zamindars on the subject. The late Mr. Davies as Collector, Midnapore, examined the question in 1924, and was of opinion that the amount of damage done to the Gangaghati *Khal* by fishing appliances was very small and probably negligible.

(*c*) It is not known if any such request was made, and the question does not arise.

(*d*) and (*e*) Government have no information on the subject.

(*f*) A complaint was received against certain land-holders alleging that they were threatening to cut the embankment. It is not known if they are members of the Flood Committee.

(*g*) Injunctions under section 144, Criminal Procedure Code, were issued against certain persons on the reports of the Circle Officer and police. No such injunction appears to have been issued on any person named in the complaint referred to in (*f*) above.

Goondas Act.

*92. **Babu AKHIL CHANDRA DATTA:** (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to state on what date the Goondas Act, 1923 (Bengal Act I of 1923), was brought into operation?

(*b*) What was the total number of men against whom action was taken under the said Act every year since it was brought into operation?

(*c*) What was the total number of men externed every year under the said Act?

(*d*) What was the total number of men, year by year, against whom orders were issued but who absconded or could not be found?

(*e*) What was the total number of men, year by year, who after externment were re-arrested by the police within the prohibited area?

(*f*) What was the total number of men on the 16th August, 1928, against whom action was contemplated under the Goondas Act?

(*g*) What was the total number of men on the 16th August, 1928, against whom orders under the Goondas Act were issued but have not been yet served?

(*h*) Is it a fact that at the time of the last *hartal* on the 3rd February, 1928, certain people in Calcutta were told by the police that if they did not join in anti-*hartal* demonstrations and activities action against them would be taken under the Goondas Act?

MEMBER in charge of POLICE DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (*a*) 28th February, 1923.

(*b*) 1923—39.
1924—21.
1925—26.
1926—78.
1927—70.
1928—40.

(*c*) 1923—35.
1924—21.
1925—25.
1926—57.
1927—46.
1928—34.

(*d*) 1923—0.
1924—0.
1925—0.
1926—5.
1927—0.
1928—0.

(*e*) 1923—7.
1924—7.
1925—12.
1926—26.
1927—45.
1928—34.

(*f*) Government have no information on this subject.

(*g*) One.

(*h*) No.

Goondas Act.

*93. **Babu JATINDRA NATH CHAKRABURTTY:** (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to state on what date the Goondas Act, 1923 (Bengal Act I of 1923), was brought into operation?

(*b*) What was the total number of men against whom action was taken under the said Act every year since it was brought into operation?

(*c*) What was the total number of men externed every year under the said Act?

(*d*) What was the total number of men, year by year, against whom orders were issued but who absconded or could not be found?

(*e*) What was the total number of men, year by year, who after externment were re-arrested by the police within the prohibited area?

(*f*) What was the total number of men on the 16th August, 1928, against whom action was contemplated under the Goondas Act?

(*g*) What was the total number of men on the 16th August, 1928, against whom orders under the Goondas Act were issued but have not been yet served?

(*h*) Is it a fact that at the time of the last *hartal* on the 3rd February, 1928, certain people in Calcutta were told by the police that if they did not join in anti-*hartal* demonstrations and activities, action against them would be taken under the Goondas Act?

The Hon'ble Mr. W. D. R. PRENTICE: (*a*) to (*h*) The information is given in answer to a question by Babu Akhil Chandra Datta.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was resumed.

Dr. BIDHAN CHANDRA ROY: With regard to amendment No. 1094, on behalf of my party I make a statement that although Babu Jogindra Chandra Chakravarti moved this amendment he thought that he was moving it in the interest of a certain class of tenants and co-sharers but we felt it better to leave the scheme of the Bill as it stands under the present conditions. Therefore, we have asked Babu Jogindra Chandra Chakravarti not to press the amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I ask for leave to withdraw the amendment.

The motion was then, by leave of the Council, withdrawn.

Babu AMARENDRA NATH GHOSE: I beg to move the amendment standing in my name in an amended form: that in clause 49 (*b*) after the word "agriculture" the words "or for drinking" be inserted.

Mr. PRESIDENT: It will be interesting to know if the Hon'ble Member in charge of the Bill agrees to this new amendment?

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): Yes, I agree to the amendment being moved and also accept it.

The motion was then put and agreed to.

The following amendments were called but not moved:—

Maulvi SHAMSUR-RAHMAN, Khan Sahib ABDUS SATTAR and Srijut NAGENDRA NARAYAN SEN to move that in clause 59 in the proposed section 93 (*ii*) in clause (*ii*) the words "(*a*) more than half the tenants" be omitted.

Babu AMARENDRA NATH GHOSE to move that in clause 59 in proposed section 93 (*ii*), in line 13, for the brackets, letter and words "(*a*) more than half the tenants" the brackets, letter and words "(*a*) two or more tenants who have obtained the leave of the Court to apply in a representative capacity" be substituted.

Babu AMARENDRA NATH GHOSE to move that in clause 59 in proposed section 93 (*ii*), in lines 14 and 15, for the brackets, letter and words "(*b*) co-sharers holding more than half the aggregated interests in the estate or tenure" the brackets, letter and words "(*b*) one or more co-sharers holding interests in the estate or tenure" be substituted.

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 61, in proposed section 99A (*1*), lines 3 and 4, the words "by an instruments in writing" be omitted.

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 61, in proposed section 99A (*2*) (*a*), lines 1 to 3, for the words "on application by the common agent and on production by him of the instrument of appointment" the words "on application by the joint or co-sharer landlords" be substituted.

Babu AKHIL CHANDRA DATTA to move that in clause 61 after the proposed section 99A, the following be inserted, namely:—

"99AA. (*1*) When no common agent is appointed by joint or co-sharer landlords under section 99A, the District Judge shall on the application of any one or more of the joint or co-sharer landlords, and after hearing the other joint or co-sharer landlords, appoint a common agent.

(*2*) The provisions of section 99A shall so far as possible be applicable to such common agent."

Clause 62.

Rai HARENDRA NATH CHAUDHURI to move that sub-section (*2*) of the proposed section 100 substituted by clause 62 of the Bill be omitted.

Clause 63.

Khan Bahadur Maulvi AZIZUL HAQUE and Maulvi TAMIZUDDIN KHAN to move that sub-clause (*ii*) of clause 63 be omitted.

Babu AMARENDRA NATH GHOSE to move that in clause 63 (*ii*) to the proposed proviso the following words be added, namely, "except the homestead land of the raiyats as defined in sub-section (*2*) of section 5."

Clause 64.

Mr. BIJOY PRASAD SINGH ROY to move that sub-clauses (*ii*) and (*iii*) of clause 64 be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE to move that sub-clause (*iii*) of clause 64 be omitted.

Clause 67.

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that at the end of clause 67 the following shall be added, namely, " and after clause (*h*) as so substituted the following new clause be added, namely:—

' (*i*) that the Revenue Officer has not followed the principles laid down in sections 7 to 9, 27 to 36, 38, 39, 43, 50 to 52 and 180.' "

Clause 68.

Maulvi NURUL HUQ CHAUDHURI to move that in clause 68 (*a*), line 1, for the words, brackets and figure " sub-sections (*1*) and " the word " sub-section " shall be substituted.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: I beg to move that in clause 68 (*1*) after clause (*b*) the following be inserted, namely: (*c*) in sub-section (*5*) the words " orally or " after the words " if accepted " be omitted.

The object of my amendment is this: when a compromise is arrived at between parties they must file a written document and oral compromise should not be given effect to. Compromise must be written and not oral. So I want to omit the words " orally or."

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of order. My friend wants to amend sub-clause (*5*) of section 105 which is not open to discussion. The only amendment in section 105 (*2*) is *four months*.

Mr. PRESIDENT: Apparently the Rai Bahadur is not satisfied with the contention of Khan Bahadur Maulvi Azizul Haque. I am going to put off the consideration of this amendment for the present. I will go on with 1113 in the meantime.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I beg to move that in clause 70 the proposed section 105B be omitted. I will read the section which runs thus:

> "When any issue is issued under section 105A, the party raising it shall pay, in addition to any other court fees which he may be liable to pay such court fees as he would have been liable to pay if he had claimed relief under section 106."

I object to this on principle because when an issue is raised on the pleading of certain party it is not proper that he should be made liable to pay court fees because he raises an issue. According to the procedure that has been followed so long there is no such provision for the payment of court fees because a party raises a certain issue. So far as I have been able to go through the Bill I do not find any justification whatsoever as to why the tenant who happens to come in on an application being made by the landlord and puts in written statement and raises certain issues, he should have to pay court fees for this. Sir, I object to this provision and therefore propose that this should be omitted. I do so especially in the interests of the tenants for they are the persons likely to suffer is such a provision like this is inserted.

Mr. JOGESH CHANDRA GUPTA: In supporting the amendment moved by Babu Jogindra Chandra Chakravarti I have only to add this. It is well known that the costs of settlement proceedings are levied upon the parties, both landlords and tenants and also all people have got to pay some settlement cost. Therefore I take it that when a tenant raises a certain issue he ought to be able to get a decision because we do pay the settlement operation expenses, and the additional levy of court fee before a Revenue Officer is not justifiable.

Mr. B. E. J. BURGE: I oppose this amendment. The first point is that the provision for fees under sections 105 and 106 is not included in the budget nor are they covered by any recovery under section 114. Section 114 covers the cases up to the time of final publication. Under section 105 cases which occur after publication are dealt with under court fees levied upon the parties. The question at issue raised by Babu Jogindra Chandra Chakravarti is this: In a suit under section 105 it occasionally occurs that issues are framed and raised under section 105A. These issues are in fact suits in most cases triable under section 106 and as such they raise very important and very difficult questions. In suits under section 106B ad valorem court fees are chargeable. It comes as a logical conclusion that in suits under section 105A and suits under section 106, the same ad valorem court fee should be leviable. It has been accepted by various committees and I do not think it causes any injustice to any party at all. I therefore oppose the amendment.

The motion that in clause 70, the proposed section 105B, shall be omitted was then put and a division taken with the following result:—

AYES.

Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Premotha Nath.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Chakravarti, Babu Jogindra Chandra.
Chaudhuri, Maulvi Nurul Nuq.
Datta, Babu Akhil Chandra.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Nuq, Khan Bahadur Maulvi Ekramul.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F. M. Abdur-
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Dr. Bidhan Chandra.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sen, Srijut Nagendra Nath.

NOES.

Asharjya Chaudhuri, Maharaja Shashi Kanta.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Mr. Altaf.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Kasem, Maulvi Abul.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Ray, Babu Surendra Nath.
Reid, Mr. R. N.
Ray, Mr. Bijoy Prasad Singh.
Sachse, Mr. F. A.
Sen, Mr. Satish Chandra.
Shah, Mr. Ghulam Hossain.
Stapleton, Mr. H. E.

The Ayes being 26 and the Noes 32, the motion was lost.

Mr. PRESIDENT: We shall now go back to 1111 which was objected to by Khan Bahadur Maulvi Azizul Haque on the ground that it was not in order. I find that it is in order.

Khan Bahadur Maulvi AZIZUL HAQUE: What I beg to submit, Sir, is that it is outside the scope of the present Bill for the simple reason that though there is a substitution of East Bengal law by West Bengal so far as section 5 is concerned the langauge of East Bengal and West Bengal is identical, word for word, for the purpose of convenience, but it has not affected the section at all.

Mr. PRESIDENT: I rule that since section 105 has been substituted and is now in the Bill which is before the House and may be passed into an Act, Rai Satyendra Nath Roy Choudhuri Bahadur is perfectly justified in moving his amendment with reference to that section.

11 a.m.

Mr. JOGESH CHANDRA GUPTA: Sir, I beg to support Rai Bahadur Satyendra Nath Roy Choudhuri with regard to this motion. One of the strongest reasons that can be put forward in support of this amendment is this. We all know that there is now a tendency towards the speedy disposal of cases, and we all know that the merit of a particular officer—unfortunately both in the revenue and judicial lines—nowadays is judged not by the merits of their decisions but by the quantity of work that they can put in, and by the number of cases they can dispose of. That being so, there will only naturally be an inclination to dispose of cases, and sometimes there is bound to be an intentional or unintentional inclination on the part of the officer to overlook whether the parties have finally accepted a compromise or not. Therefore, I think the words "orally or" should be omitted.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I am afraid the mover in this case perhaps does not really realise the special conditions under which cases under section 105, to which this amendment relates, are disposed of in the mufassal. The word "orally" has existed in this section ever since the Act came into force, and action has been taken on that section by revenue officers, but never has any complaint been made that the compromise accepted was not proper. What happens is that the revenue officer when he tries a case under section 105 probably has the whole village on one side, consisting of about 500 tenants in some cases, and the landlord on the other. He starts a negotiation for a compromise, and after discussions the parties arrive at a compromise, which will be absolutely impossible to give effect to if it is to be compulsorily recorded in writing, because among the tenants there may be minors, widows, and others, who may not properly be represented in the legal sense. Therefore, if a compromise in the case of a proceeding under section 105 is to be recorded in writing, it will be very difficult to give effect to such compromise. I think in a case like this the revenue officer who has got to decide the issues should be trusted. I strongly deny the allegation made by Mr. Gupta that in deciding the issues revenue officers are guided simply by their anxiety to show a big outturn by speedy disposal of cases and not by the merits of the cases. That is not a fact. What the revenue officer is very anxious about generally is to bring about compromises and to settle all differences between landlords and tenants. If his action is hampered by all sorts of legal limitations, I am afraid that the good work done by revenue officers generally under this section will be very much retarded. For this reason, I strongly oppose this amendment.

The motion of Rai Satyendra Nath Roy Choudhuri Bahadur was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Premotha Nath.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Chakravarti, Babu Jogindra Chandra.
Chaudhuri, Maulvi Nurul Huq.
Datta, Babu Akhil Chandra.
Parequi, Khan Bahadur K. G. M.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Naeker, Babu Ram Chandra.
Pal Chaudhuri, Mr Ranjit.
Rahman, Maulvi Shamsur-Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Dr. Bidhan Chandra.
Ray, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayon.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Ghose, Mr. M. C.
Gilchrist, Mr. R. N.
Gupta, Rai Bahadur Mahendra Nath.
Huque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Prevash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Ray, Babu Nagendra Narayan.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Shah, Mr. Ghelam Hossain.
Stapleton, Mr. H. E.

The Ayes being 34 and the Noes 30, the following motion was carried:—

"That in clause 68 (*1*) after clause (*b*) the following be inserted, namely:—

"(*c*) in sub-section (*5*) the words 'orally or' after the words 'if accepted' shall be omitted."

The following amendment was called but not moved:—

Srijut TARAKNATH MUKERJEA to move that in clause 70 proposed section 105C, be omitted.

Srijut NAGENDRA NATH SEN: Sir, I beg to move that after clause 71 (*1*) the following shall be added, namely, "and in the proviso after the word 'may' where it first occurs the words 'and he shall, if required by all the contending parties thereto' shall be inserted."

My object in moving this amendment is this. The present law provides for the reference of cases under section 106 to the ordinary civil court. The existing section 106 contains the following proviso:—

> "Provided that the revenue officer may, subject to such rules as as the local Government may prescribe in this behalf, transfer any particular case or class of cases to a competent civil court for trial."

If the revenue officer is empowered to make over certain classes of cases to the civil court for trial, it passes our comprehension why he should refuse the contending parties when they ask for a reference of their case to the civil court. As regards the faith of the litigant public in revenue court trials and criminal court trials, it is practically non-existent. If the public have faith in any court, it is the civil court. If the parties wish what certain classes of cases should be tried by the civil court, there is no reason why the presiding officer, who is competent to transfer those cases to the civil court, should not do so. If the parties want justice, let them not only have it but let them also feel that they are getting justice. If they think that they will get justice in the civil court instead of in the revenue court, let them have it by all means.

Mr. B. E. J. BURGE: Sir, I oppose this amendment, and in doing so I wish to make it clear that I resent most strongly the insinuations contained in the speech of the mover of the amendment. If the mover contends that no party can get justice in the revenue court, then he should have moved an amendment for omitting all these sections altogether. If he cannot get justice in the revenue court, then under section 109 it is open to him to go to the District Judge or to the High Court. I resent this allegation of want of impartiality which has been made against revenue officers. Revenue officers are by their very situation in the mufussal able to give far more attention to the merits of such cases than the civil court. If the mover objects to the clause as it stands, his remedy is to bring a suit under section 105 or 106 and go to the civil court afterwards. He will have four months' time to decide whether to go to the civil court or not. Even if he lets four months go by, he can still go to the civil court, and it would simply mean that in the case of a judgment going against both sides, both the parties should meet together and say that they would take the case to a civil court. The amendment will serve no useful purpose: it will only waste the time of the parties and the court. It will increase litigation and will automatically put money in the pockets of people who do not deserve it.

With these words, Sir, I oppose the motion.

11-15 a.m.

The motion of Srijut Nagendra Nath Sen was then put and a division taken with the following result:—

AYES.

Aliqullah, Mr. Syed Md.
Bagchi, Babu Remes Chandra.
Banerjee, Babu Prometha Nath.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Chakravarti, Babu Jogindra Chandra.
Chaudhuri, Maulvi Nurul Huq.
Datta, Babu Akhil Chandra.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukarjea, Srijut Taraknath.
Nasker, Babu Hem Chandra.
Pal Chaudhuri, Mr. Ranjit.
Rahman, Maulvi Azizur.
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prasanna Deb.
Ray, Babu Nagendra Narayan.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray, Dr. Bidhan Chandra.
Ray, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Ray, Mr. Kiran Sankar.
Ray Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Shupendra Narayan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Mr. Altaf.
Banerjee, Mr. A. C.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Choudhuri, Babu Pranendra Narayan.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Farequi, Khan Bahadur K. D. M.
Ghose, Mr. M. C.
Gilchrist, Mr. R. N.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Kasem, Maulvi Abul.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Shah, Mr. Ghalam Hossain.
Stapleton, Mr. H. E.

The Ayes being 33 and the Noes 35, the motion was lost.

Mr. PRESIDENT: I find that 1121 is wider in its scope than 1120. I should therefore like to take up 1121 first.

The following amendments were called but not moved:—

Maulvi SHAMSUR-RAHMAN and Srijut NAGENDRA NATH SEN to move that clause 73 be omitted.

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 73 the following clause be added before clause (*a*), namely:—
"(*a*) in sub-section (*1*) after the words 'suits' in line 6, the following

shall be inserted: 'And in particular shall, in any proceeding or suit in which the status of a tenant is in issue direct that every person holding directly or indirectly under or over such tenant whose interest may be affected by the decision of the issue, shall, if he is not already party to the proceeding or suit, be joined as a party thereto.' "

Clause 76.

Maulvi ABUL KASEM to move that clause 76 be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE: I move that sub-clause (*ii*) of clause 76 be omitted.

Sir, sub-clause (*ii*) of section 76 which is an addition to the Act reads:—

"Provided that nothing contained in this section shall debar a civil court from entertaining a suit concerning any matter which:—

(*a*) was the subject-matter of an application under section 105, or section 105A, or of a suit under section 106, if such application or suit has been dismissed for default or withdrawn, or

(*b*) has not been finally adjudicated upon in any such proceeding or suit.

Speaking on behalf of the tenants I consider it to be a distinct infringement of the rights of the tenants. It will provide another machinery to the landlords to drag the tenants to the revenue court and then, if there is any difficulty there, to stop and drag him again to the civil court. Sir, when a case is once brought in the revenue court, under the law as it stands it could not again be taken in the civil court. If the landlord finds that his papers are not ready or if he finds it convenient not to attend the revenue court, he is allowed under this section to go to the civil court. This disadvantage to the tenant will accrue if this amendment is accepted. So far as this sub-clause is concerned, if a man wants to harass tenants he can do so up to the last stage and then withdraw the suit, and the tenant will have no remedy and he will be given no cost. I do not see any reason why this proviso should be added to the Act. It is quite unnecessary so far as the object of the clause is concerned, the existing law is quite enough and I do not think that Government is justified in coming to the House in this manner without giving any explanation for the necessity of this clause. Personally, I consider that the law as it stands is good enough.

Mr. B. E. J. BURGE: In opposing this amendment I would draw the mover's attention to the fact that the amendment of the section has been the omission or deletion of the words "with or without liberty to file fresh suit." Under the old law if a suit was dismissed it was at the discretion of the court to grant liberty to the party to raise issue again. I quite agree with the mover however that cases may arise where a party may withdraw the suit at the last moment with an ulterior motive, but at the same time there are good and bona fide cases where a party cannot prosecute the case before the revenue officer and if he withdraws the suit for lack of money or for lack of documents, and as the time is limited, because the revenue court do not encourage delay—in that case it would be a great hardship if he is debarred from raising the issue again. The principle of res judicata does not apply because no issue has been decided by the revenue court. I admit, as the mover has said that in certain cases there may be injustice. But in the majority of cases the mover's suggestions will do more harm than good.

Maulvi NURUL HUQ CHAUDHURI: Sir, I am unable to understand the policy of Government in regard to this amendment. Just now at the instance of the Government the House has turned down an amendment in which it was suggested that if both the parties agreed they could take the case to the civil court. But the result of this proviso, will be that if one of the parties fails to attend the court of the revenue officer or simply default, the case can be taken to the civil court. So that it comes to this: if both the parties agree to take the case to the civil court, they cannot do so, but if one of the parties wishes to take it to the civil court he can do so if he is willing to practice a little fraud. I am not for encouraging such kinds of frauds. It is very easy to default. The applicant may simply choose not to go to the revenue court and in that case the applicant will have the power to take the dispute to the civil court. If the applicant finds that he is going to lose the case in the revenue court all that he has to do is simply to fail to attend the revenue court and the result will be that on account of his default the same case can be filed again in the civil court.

Mr. SATISH CHANDRA SEN: Sir, I must oppose this amendment. I am sorry that this amendment has been proposed by an eminent lawyer, Khan Bahadur Maulvi Asizul Haque. My friend, the Khan Bahadur, knows very well that every person has a right to institute any suit. He is only debarred from doing so in certain

cases when the matter has been adjudicated upon in previous suits. Now what is the first portion of this section 109. It runs thus:

> "a civil court shall not entertain any application or suit concerning any matter which is or has already been subject of an application made, suit instituted or proceedings taken under sections 105 and 108."

11-30 a.m.

The section applies when no question has been adjudicated. As soon as a suit has been instituted or an application made this section applies. When a suit has been instituted but not necessarily any adjudication has been made, how can that be treated as res judicata between the parties when no decision has been arrived at? The proposed addition provides (*i*) that only in certain cases where an application has been dismissed by the court for default on the part of the plaintiff for non-appearance or withdrawn; and secondly (*ii*) where no adjudication has been made finally in any such proceeding or suit that the decision shall not act as a bar; so if the section is not amended by the suggested additions in the Bill then it would be treated as barring a suit simply because the subject-matter has been left without adjudication merely being mentioned in the petition or application. This is against all idea of justice and there is no reason why relief should not be given to the parties.

In these circumstances I oppose the amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: There is a legal aspect of the question which perhaps my friend the Khan Bahadur and other lawyer friends will appreciate. I would remind the lawyer members of this House that in a recent Full Bench case it was decided that if a suit or proceeding under section 105 or section 106 of the Bengal Tenancy Act be withdrawn then order 23, Rule 1, of the Civil Procedure Code would no longer apply—three learned judges were of this opinion with the result that no remedy was available subsequently in a civil court, although the dispute involved in the suit or proceeding was never tried by any court civil or revenue. Then again this question which concerns both landlords and tenants. Suits or proceeding under sections 105 and 106 can be brought both by landlords and tenants, although it is true that proceedings under section 105 are brought more often by landlords than by tenants. If for some technical defect, or other reason, the first suit has to be withdrawn and an application is made under Order XXIII, Rule 1 then as I have already pointed out the second suit is not maintainable and the parties are left without a remedy. Similarly, if an application under section 105 or section 106 has been dismissed for default there would be no remedy. Then there is often this practical difference

between an ordinary civil court and a revenue court, namely: an ordinary civil court is there for all time, but the revenue court is there for a limited time only two months, or 12 months. (A voice: Two years.) It may be two years, or even more than 2 years, but the revenue court is not a permanent court. When the court is no longer there then you cannot file an application before it, either for the revival of the suit nor can you institute a fresh suit, when the first suit was withdrawn with liberty to bring a fresh suit. Therefore, the amendments proposed in our Bill are necessary in the interests of administration of justice. Without these amendments perhaps the parties will be driven to circumlocuty of proceedings. They will perhaps attempt to institute suits for recovery of possession or declaration of title or will attempt litigation in time of the effective form. It is much better that disputes should be dealt with in a straightforward manner, and they will not be so dealt with if the amendment before the House is accepted.

Mr. JOGESH CHANDRA GUPTA: I was rather surprised to see that Khan Bahadur Maulvi Azizul Haque, who has so very ably supported the cause of the tenants in this House during the discussion on the Bengal Tenancy Bill, has tabled this amendment. If it is his experience of the Nadia settlement that such an amendment is necessary, I am constrained to remark that that experience is very narrow and not at all comprehensive, and that experience has debarred him from looking at the question from a broader point of view. As has been pointed out in this case, we know that section 106 proceedings are resorted to by the tenants largely when they find that during the progress of settlement work some mistake has occurred, and some of the rights to which they are entitled, have been omitted. I do not know whether my friend, Khan Bahadur Maulvi Azizul Haque, intends that when after four months of the final publication of the record-of-rights a tenant has instituted a suit for the correction of that entry and unfortunately on account of illness or some other reason has been prevented from attending court and to prosecute the suit, he should be deprived, for all time to come, of the remedy in a civil court. If this is intended by the Khan Bahadur I must say that at the fag end of the session he is doing a very doubtful service to the tenants whose case he has urged so vehemently here.

The next thing that I was surprised to hear from the Khan Bahadur was his idea of res judicata in certain matters. If a tenant or if a party institutes a suit, and then that suit is not pressed to a decision, I fail to understand how a lawyer can possibly urge that it should operate as a bar. The only bar of res judicata, as my knows, can be pleaded when issues have been substantially or directly raised between the parties and if such an issue has been finally decided.

(A VOICE: It is the law.) I am thankful to my friend for his interruption. If he will bear with me for a minute more, I will explain how the question of res judicata comes in. If you omit this sub-clause, the effect will be exactly like the operation of the section of res judicata. I hope there is no doubt on this point. Therefore the question of res judicata arises. Just as by the operation of the principle of res judicata the issue that has been raised substantially and directly cannot be again reopened by a subsequent suit in a civil court, similarly also this provision would have the effect of shutting out all the remedies to the parties though they have failed to raise the issue much less to have an adjudication upon that issue. Therefore, I say, I was really surprised when Khan Bahadur moved this amendment. I think after what I have said the Khan Bahadur will reconsider the position and withdraw this amendment. That is so far as the tenant's interest is concerned. Similarly, we have got to consider the interests of the other parties to the suit. A short time ago, when it was discussed in this House that there were many matters which were not desirable that the revenue officer should decide and I thought that the Khan Bahadur was also of the same opinion. If that is so, if all future remedies in the civil court are to be barred for all time to come because sections 105-108 proceedings may have been instituted, there will certainly be a great injustice to the interests of the litigant public. This proviso however will affect, if anybody, the lawyers; because this proviso will remove all doubt with regard to the desirability or otherwise of instituting a suit when sections 105 and 106 proceedings have been instituted or conducted. It sometimes happens that when a section 105 or 108 case is pending the parties will go to seek advice of the lawyers whether they can at the same time continue a proceeding in the civil court. When sections 105-108 proceedings are withdrawn or dismissed for default, then also they come and ask for the advice of lawyers. Some might say that because it has been withdrawn or dismissed there is no remedy, but if the proviso is there, there will be no opportunity of giving such wrong advice. Therefore, I think the proviso ought to remain in the Act; and I oppose this amendment.

Mr. BIJOY PRASAD SINGH ROY: Sir, I am surprised to find that a lawyer of the position and standing of my friend, Khan Bahadur Maulvi Azizul Haque, should give notice of this amendment. The subject-matter of this proviso was discussed in a very large number of judicial findings including those by the High Court. The amendment I find has been drafted according to the opinion of the Hon'ble High Court. Great injustice has been done to many landlords as well as to tenants by holding that where an application has been disposed of under section 105, under section 109 the civil court is barred from taking it into consideration. There is a consensus of opinion that

the law on this point is imperfect and that the Act should be amended. The Government has accordingly drafted the Bill in conformity with the opinion of the High Court. So I do not think we should object to it.

Mr. A. K. FAZL-UL HUQ: The fact that the members who have spent their time in the Settlement Department and are trying to deal with the matter in this way, is somewhat surprising to us. In this particular case the matter is not free from difficulty and if I say a few words, I do so only to ask Mr. Burge if he will be pleased to favour us with certain information on one or two points which might help to clear the difficulty which I find rests in the way of accepting this proposal.

I entirely agree with Mr. J. C. Gupta that there may be very, very hard cases which it is necessary to provide for, and for which recourse to the civil court seems to be the only remedy. But as I read the section I take it that the object is that there should be some sort of finality in settlement proceedings, and where a suit or an application under section 105 or 106 has been finally adjudicated upon, a further reference to the civil court should not be considered desirable. It is only where for default, or for some reason or other, or for some sufficient cause, the party in a suit has recourse to the settlement officer and has not been able to follow it up by a suit or application that it is proposed to give these aggrieved persons a remedy by recourse to the civil court. I wish to know whether it is a fact that when there is a default and the suit or application has been dismissed, it can be revived under the ordinary rules of the Civil Procedure Code, that is to say, there will be two courses open to the aggrieved party either to revive the suit or the application, before the settlement officers, or if this proviso be accepted, to go to the civil court and litigate upon the same matter. It seems to me that if the remedy of revival of the settlement proceedings is still open to him, the deletion of this proviso will not cause any real hardship. It would then be a question of selection or election between litigating before the settlement authorities or litigating in the civil courts. I think, Sir, that for speedy disposal, summary justice which is substantially the kind of justice which satisfies at least the tenants in the mufassal, the proceedings before settlement authorities are much to be preferred to the long drawn-out proceedings in the civil courts. With these comments, Sir, I would ask Mr. Burge to consider if the position which I have indicated is not the correct one.

Mr. B. E. J. BURGE: As a point of explanation, I think, Sir, Mr. Fazl-ul Haq concentrated his arguments entirely on the effect of default before the hearing of a case. That merely means that owing

to default the parties have to go to the civil court. The main point is the withdrawal of suits. If a suit is not heard owing to the parties' default the settlement officers have no inherent power under the Act to allow the suit to be restored. Well, the civil court may have the suit restored. However, that is a matter for civil court lawyers. I know that cases which are withdrawn after hearing are very, very few.

Khan Bahadur Maulvi AZIZUL HAQUE: No, they are not few.

Mr. B. E. J. BURGE: I stick to my statement that they are very, very few.

The motion that sub-clause (*n*) of clause 76 shall be omitted was then put and lost.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I beg to move that in clause 77, the word "and" at the end of sub-clause (*2*) and the proposed clause (*3*) be omitted.

Sir, I mean that clause (*2a*) of section 115C should be omitted. It is therefore necessary for me to read clause (*2*) of section 115C—

> "(2) An appeal shall lie to the Special Judge from the decisions of a revenue officer under sections [105 to 108 (both inclusive)] 105 to 108, both inclusive, and section 115B and the provisions of (the Code of Civil Procedure) the Code of Civil Procedure, 1908, relating to appeals shall, as nearly as may be, apply to all such appeals."

So, according to section 115C (*2*) the power of appeal is given against a decision under section 115B. Section 115B says—

> "Any revenue officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within (twelve months) two years from the date of the certificate of the final publication of the record-of-rights under sub-section (*2*) of section 103A, correct any entry in such record-of-rights which he is satisfied has been made owing to a bona fide mistake."

Then there is a proviso. This new clause (*2a*) lays down that an appeal shall not lie to the Special Judge from any order passed under section 115B, so far as it relates to Part II of the Chapter.

Now, Sir, Part II of the Chapter relates to settlement of rents, preparation of rent roll and disposal of objections in cases where a settlement of land revenue is being or is about to be made. It is clear

therefore from the new provision, sub-clause (*2a*) that it is the intention of the framers of the Bill that so far as these proceedings, that is to say, proceedings in connection with settlement of rents and preparation of rent-roll, disposal of objections, etc., in cases where a settlement of land revenue is being made, there will be no appeal from the decision of a revenue officer made under section 115B.

Now, it will be obvious to the members of this House that very large powers are given to revenue officers under section 115B, that is to say, he can, either on application being made to him, or on his own initiative within a certain time, say within two years, correct any entry in any record-of-rights under sub-section (*2*) of section 103A. If he exercises these powers in cases where a settlement of land revenue is being made, his decision should be subject to appeal. So far as I have looked into this matter, it seems to me that there is absolutely no justification for making this distinction between one case and another, because if an appeal to the Special Judge is allowed in cases where settlement of land revenue is not being made, it only seems to be fair and just that the same provisions should apply to cases where settlement of land revenue is being made. Therefore, I move that clause (*2a*) of section 115C be omitted from the Bill.

Mr. B. E. J. BURGE: Sir, in opposing this amendment, I think that Babu Jogindra Chandra Chakravarti sees some very insidious purpose underlying the provisions of this clause. I think it is hardly necessary to point out to him that in Chapter X there are two main provisions—the provision where land revenue is being or is about to be settled and the provision where land revenue is not being, or is not about to be settled. The apparent chain from the first is the chain from the revenue officer to the settlement officer and from the settlement officer to the Director of Land Records, and from him to the Board of Revenue; they are all purely revenue officers and they deal purely with revenue matters. Before leaving this point, I would like to point out that, in dealing with revenue matters, however much the parties might like the civil courts, they must admit that revenue officers, during the course of their duties, cannot help gaining a certain amount of experience, and just in the same way that only a superior revenue officer can correct the mistakes of an inferior revenue officer, so in the same way would an outsider hesitate from interfering say, with a lawyer in drafting a conveyance, or from interfering with a doctor in the diagnosis of a disease—so the ordinary public in an application under section 115C, where an order under section 115B has been made, should hesitate from stepping in where a technical man has passed an order on a purely bona fide mistake. Secondly, settlement of land revenue is being made under regulations and rents are being settled under Chapter X. A bona fide mistake as such would probably affect an entry of rent, if it affects anything else, and the

settlement officer can fix it up. There is still an appeal to a superior revenue officer, but as the revenue officer or settlement officer, as the case may be, is the final authority who settles the rent, it is presumed to be fair and equitable. If he makes an alteration in the rent, it is still presumed to be fair and equitable. I would again emphasise the point of section 115B which deals more or less with bona fide mistakes. I can assure the mover of the amendment that a fairly large number of cases under section 108A come up in the district of 24-Parganas and that, in practice, in every case no correction is made under section 108A of the present Act (section 115B of the new Act) in the absence of parties. In every case the parties are summoned before an order is passed. If in any case there is any difficulty or disagreement an order under section 115B is refused. I would, therefore, ask the mover of the amendment if, after considering my remarks, he would withdraw this amendment.

Mr. JOGESH CHANDRA GUPTA: The opposition from Government to the right of appeal to the Special Judge where Government suits are concerned is naturally viewed with suspicion in this side of the House. Mr. Burge, who is very precise and to the point in his replies, has said that only bona fide mistakes are corrected by the revenue officer under section 115B. Now, we know that there are a large number of estates which are resumed as diara lands. We also know that a very keen fight for status always takes place between the owners of the parent estate and the Government over the resumption proceedings; and we further know that the owners come off the second best before the revenue officers when they make a claim against the Government's rights to resume the lands and to make diara mahals, or to assess rents, or to reserve the rents for the Government, while making a resettlement. At any rate whatever it is, we do not think that the decisions of the revenue officers should be regarded as infallible and the right of appeal to a Special Judge should be taken away. In this connection, I have got to say something with regard to a statement made by my friend Khan Bahadur Abdul Mumin that the revenue officers are very careful and they do not really look to the speedy disposal of cases. I am sorry, Sir, that I cannot agree or subscribe myself to this proposition. It is common knowledge now, not to speak of revenue officers but of all judicial officers, that they only think of the amount of work disposed of by them and nowadays it is the case that officers are judged by the quantity of work that they can dispose of and not by the quality of work. So, we find that a good deal of miscarriage of justice takes place. (Question!) My friend the Khan Bahadur perhaps still insists that they are infallible.

Khan Bahadur MUHAMMAD ABDUL MUMIN: They are honest.

Mr. JOGESH CHANDRA GUPTA: I did not raise the question of honesty, but if my learned friend will consider it from the point of view of honesty, he will see that it requires a great deal of relaxation of conscience when an officer thinks that he is doing his duty very honestly by disposing of the largest number of cases which his superior officers want him to dispose of.

12 noon.

We also further know that under the existing circumstances officers hover round the sharistadars who generally send out returns of disposal of cases.

Mr. PRESIDENT: You need not pursue that point any further.

Mr. JOGESH CHANDRA GUPTA: I will not, Sir, and in fact I had no intention of doing so but my friend, Mr. Mumin, compelled me to discuss it.

Having regard to the existing state of things we ought not to take away the right of appeal from any party and especially when that appeal is with regard to Government estates and Government settlements.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I am afraid my friend, Mr. Gupta, is under a misapprehension that by this amendment we are taking away a right which existed before. In this case we are not dealing with the action of revenue officers with regard to the settlement of revenue or rent under Part II of Chapter II generally, but only with regard to a particular section under which they may make corrections of bona fide mistakes. As Mr. Burge has already explained to the House, an appeal against an action of a revenue officer under Part II of Chapter X has always been to the revenue courts. It has never been to the civil courts. The intention of this clause is only to continue the existing conditions and not to take away any rights which existed before. I would ask Mr. Gupta that when the Revenue Department can be trusted with the settlement of land revenue and diara proceedings, without any appeal to the civil courts why does he insist on the appeal to the civil court when it comes to a bona fide mistake. This is a very small matter and it is necessary to bring in this clause to make the intention clear. (A voice: Why do they make mistakes?) For larger issues they do not object that the appeal should be before a civil court but only in small matters they are insisting that it should go to the civil court. Revenue courts decide large issues where thousands and thousands of rupees are concerned. They can surely be entrusted with appeal in the case of bona fide mistakes.

The motion that in clause 77, the word "and" at the end of subsection (2) and the proposed clause (3) shall be omitted was put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Mr. Altaf.
Atiqullah, Mr. Syed Md.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chaudhuri, Maulvi Nurul Huq.
Chaudhury, Maulvi Khorshed Alam.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Farequi, Khan Bahadur K. G. M.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Huq, Mr. A. K. Fazl-ul.
Kasem, Maulvi Abul.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Naeker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Shamsur-.
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prasanna Deb.
Rauf, Maulvi Syed Abdur.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijay Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sanyal, Babu Sashindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Ghose, Mr. M. C.
Gilchrist, Mr. R. N.
Gupta, Rai Bahadur Mahendra Nath.
Magg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Ray Chaudhuri, Mr. K. C.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Shah, Mr. Gholam Hossain.
Stapleton, Mr. H. E.

The Ayes being 48 and the Noes 26, the motion was carried.

Maulvi NURUL HUQ CHAUDHURI: I beg to move that for clause 78, the following be substituted, namely:—

"78. Section 109B of the said Act as inserted by section 33 of the Bengal Tenancy (Amendment) Act, 1907, shall be substituted for section 109B of the said Act as inserted by section 33 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908."

Section 109B is different for the two parts of Bengal. It fir came into operation after the partition of Bengal with the result tha there have been two laws for the two parts of Bengal. Governmen has proposed that the law as it stands for Eastern Bengal and Assar should be retained for the whole of Bengal, whereas my amendmen is that the law as it prevails in the western half of the Presidenc should remain on the Statute Book. The question is which law is th better one? The proposed section 109B gives a very large power t the revenue officers; much larger than the power given to the civi court in cases of compromise. I will draw the attention of the Hous to section 147A which deals with similar cases of compromise by a civil court—

> "If any suit between landlord and tenant as such is wholly o partly adjusted by agreement or compromise, the Court shal not order an agreement or compromise to be recorded and shal not pass a decree in accordance with such agreement or com promise unless it is satisfied, for reasons to be recorded ir writing, that the terms of such agreement or compromise ar such that, if embodied in a contract, they could be enforced under this Act."

So also is the proviso which runs thus:—

> "Provided that, in the case of a suit, instituted by the landlord to enhance the rent, the enhancement, if any, agreed upon may be decreed if the court be satisfied for reasons to be recorded in writing, that such enhancement is fair and equitable and in accordance with the rules laid down in this Act for the guidance of Courts in increasing rents."

So that in the case of a suit in the civil court the court is bound to record its findings that it has been satisfied upon proper materials before it that the compromise has been equitable and in terms which are otherwise legal. If this be the limitation upon the civil courts, I cannot understand why Government has proposed to give the revenue officers wider discretion and wider powers. Is it contended that in matters of legal knowledge or in any other respect revenue officers enjoy advantages which are not available to the civil courts? If not, why do Government propose this distinction? Section 109B as applicable to Western Bengal provides the same safeguards in the interests of the tenants as section 147A.

12-15 p.m.

If the revenue officer accepts any compromise, he is bound to record after proper inquiry that the compromise arrived at is legal, that is, it has the sanction of law. But in your proposed amendment you

only say that the revenue officer "may" presume that an agreement of compromise made or entered into by any landlord with his tenant is lawful. It does not put any obligation upon the revenue officer to make an inquiry to ascertain whether the compromise is legal and not unjust for the tenant. Having conceded that the civil courts should be guided by one principle it would be absurd to say that the revenue court should be more free and that it should not be bound to make inquiries with regard to any compromise that is arrived at between the landlord and the tenant.

Sir, for the sake of consistency in law, I think it will be conceded that section 109B as applicable to Western Bengal should be retained in the Statute Book and not law as enacted for Eastern Bengal. With these words, Sir, I move my amendment.

Mr. B. E. J. BURGE: Sir, in opposing this amendment I should like to point out to the mover that the new section if read with section 109C practically comprises the whole of the original sections 109B and 109C, as was the law in West Bengal. In West Bengal, section 109B (*2*) gave to revenue officers certain powers for settling disputes of rent, but section 109B (*1*) limited his power by saying that he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act. Similarly, section 109C (*1*) gave the officer —I mean the specially selected officer—power to do exactly what he could not do under section 109B (*1*). The only difference is that while proposed section 109C (*1*) is applicable to any officer, section 109C (*1*) of the present Act applies to specially selected officer in West Bengal. Section 109B of the Eastern Bengal Act and the new clause in the new Bill will facilitate work as regards compromise arrived at between the landlord and the tenant. The compromises that will be usually effected under this chapter are usually compromises as regards rent, and there is no reason for taking such simple cases to the civil court as it is quite improbable that a tenant will agree to pay to a landlord a rent which is not lawful. He could move under section 109C (*1*) before, then why not do it under section 109B? The clauses are practically the same—109B as regards West Bengal and 109C as regards East Bengal. I therefore see no virtue in the amendment, and I oppose it.

The motion of Maulvi Nurul Huq Chaudhuri was then put and lost.

Mr. PRESIDENT: I shall now take up the first part of amendment No. 1130; the second part will be taken up separately, later on.

Khan Bahadur Maulvi EKRAMUL HUQ: Mr. President, Sir, so far as this clause of the Bill is concerned, I beg to point out that

this is quite a new thing, and as such it should not have found a place in the Bill. Sir, I beg to move the first part of my amendment namely: "that in clause 86, subclause (*a*) shall be omitted."

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I am surprised that Khan Bahadur Ekramul Huq, who was Vice-Chairman of a district board, should have moved an amendment like this. Section 116 is a special provision of the Act, under which a raiyat does not acquire occupancy rights in certain lands. Formerly this restriction was only with regard to lands which were acquired under the Land Acquisition Act for public purposes either by Government or by a company. The new clause which has now been proposed to be added in the Bill, and to which Khan Bahadur Ekramul Huq has taken objection, extends the scope of section 116 by including lands, which, though not acquired under the Land Acquisition Act, are still the property of Government or of public bodies like district boards or local boards. The idea is that in cases, for instance, of roads, which exist from a long time but which have not been acquired under the Land Acquisition Act, or of roadside lands belonging to a local body which are settled from year to year, if there is no such provision as has been embodied in the Bill, the raiyat will acquire a right in such lands and will not be ejected when the lands will be required by the district board for taking earth, for it or for other purposes. Similarly, in the case of other lands for example, there may be a local board land let out to a tenant for temporary cultivation: that land may not have been acquired under the Land Acquisition Act. Now, if there were no provision like this in the Act, the raiyat to whom this land was let out, and if he be a settled raiyat of the village, would acquire occupancy right on it, and it will not be possible for the local board to get back the land, for building a charitable dispensary or a school or for any other public purpose. To avoid such a contingency this clause has been embodied in the Bill, and I think the House will agree with me that it is a very useful provision. It really does not take away any right which the raiyats possess. This provision is necessary in the interests of the raiyats themselves. I therefore strongly oppose this amendment, and I hope, after this statement of facts, the mover will withdraw it.

The motion that in clause 86, sub-clause (*a*) shall be omitted was then, by leave of the Council, withdrawn.

Khan Bahadur Maulvi AZIZUL HAQUE: Sir, I beg to move that in clause 86 (*a*), line 4, after the word "embankment," the words "or used for any other public purpose" shall be inserted, and that in clause 86 (*a*), line 5, after the word "required," the words "or likely to be required" shall be inserted, for the simple reason that it seems to me—though I speak subject to correction—that the language of

this clause is not as comprehensive as it should be. Sir, this is one of the most salutary provisions in the Bill, as it gives certain safeguards to the district boards of Bengal: otherwise, a time may come when all the roadside lands of the district boards will go away.

Now, Sir, the language of this clause is this—

> "Lands acquired under the Land Acquisition Act for the Government or for any local authority or for a railway company, or lands belonging to the Government within a cantonment, while such lands remain the property of the Government or of any local authority or railway company."

Therefore, up to this portion it refers to the land which has been acquired by Government. Now, Sir, there are other lands which are not acquired, and they are governed by the latter portion of the clause viz:—

> ".....or lands owned by the Government or by any local authority....."

and it is qualified by this—

> ".....such lands which are used for any public work, such as a road, canal, or embankment....."

Personally, Sir, I do not claim to be an authority on the English language, but whatever little I know, it seems to me that the words "used for any public work, such as a road, canal, or embankment, or are required for the repair or maintenance of the same" exclude lands acquired for the purposes of schools and dispensaries. Public works always mean civil and maintenance works, and from that point of view it is quite probable that it might be interpreted sometimes that they do not include lands acquired for other purposes such as schools and dispensaries. Therefore, in order to avoid confusion, I have suggested that after the word "embankment" the words "or used for any other public purpose" and that after the word "required," the words "or likely to be required" shall be inserted. If my amendments are accepted the clause will read—

> ".....or lands owned by the Government or by any local authority, which are used for any public work, such as a road, canal, or embankment, or used for any other public purpose, or are required, or likely to be required, for the repair and maintenance of the same."

I do not think, Sir, I have proposed the addition of these words, which I think are not redundant: my only object has been to explain the object of the clause more clearly, especially as the words "public work" are qualified by the words "road, canal, or embankment," and may not therefore include schools, dispensaries, etc.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Sir, I certainly appreciate the reasons which have led Khan Bahadur Azizul Haque to move these amendments. And I may say, Sir, that in substance we agree with him, but I think—and we are advised—that the addition of the words he has proposed is unnecessary. Perhaps, he is under an apprehension that the examples mentioned in the clause, viz., roads, canals, and embankments, qualify the words "public work." As a matter of fact, they do not. His intentions are already fulfilled by the wording of the section as it is. I hope that after this explanation he will withdraw his amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: Why don't you agree to delete the words "such as a raod, canal, or embankment," and say that the clause will stand for any public work?

Khan Bahadur MUHAMMAD ABDUL MUMIN: I think the words simply explain what sort of public work is meant. It does not follow that the public works enumerated in these words are the only sort of public works covered by this clause. These words have been used by way of example and to make the meaning of the clause more clear.

Maulvi ABUL KASEM: Sir, from the reply which has been given on behalf of Government it seems that they have no objection to the principle of the amendments: their only objection is that they are unnecessary. The object of Government and Khan Bahadur Azizul Haque is the same: only that Government think that as the amendments are unnecessary they should not be accepted. I submitted that the language of the section, as drafted, is not very definite and clear, and any lawyer, if an occasion arose for it, could draw a line of distinction between the public works mentioned in the clause and those not mentioned. I think the best course would be to leave as little scope as possible to the lawyers to twist the meaning of public works as they liked.

Mr. B. E. J. BURGE: Sir, the changes proposed if made will not increase the clarity of this section at all. Far from being helpful, it would not make it any the clearer. And I do not think that by saying a thing twice you can make it more clear than by saying it once.

12-30 p.m.

The motions of Khan Bahadur Maulvi Azizul Haque were then put and lost.

Mr. PRESIDENT: I would like to have one discussion on Nos. 1133 to 1135.

The following amendments were called but not moved:—

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR-RAHMAN to move that in clause 86 after sub-clause (*a*) the words "and" shall be omitted and after sub-clause (*a*) the following be inserted, namely:—

"and

(*aa*) after the words 'a proprietor's' the words 'or tenure-holder's or under-tenure-holders's' be inserted."

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 86 (*b*) in the last paragraph of section 116 of the Act after the word "proprietor's" the words "and tenure-holders" be inserted.

Mr. PRESIDENT: I shall now go back to 1130 (*ii*).

Khan Bahadur Maulvi EKRAMUL HUQ: I move that in clause 86 for sub-clause (*b*) the following be substituted, namely:—

"(*b*) the words beginning with 'a proprietor's private lands' and ending with 'year to year' shall be omitted."

Sir, let me say at the start that I do not for a moment object to proprietors having private lands of their own. Let them have private lands as much as they like, let them create gardens by employing hired labourers and let them grow fodders and crops as they please. As long as the proprietors do that I think they certainly shall be entitled to keep their lands as private lands and the persons belonging to the village should have absolutely no right to any of these lands. But my objection is this: that when the proprietors find that they cannot keep these private lands, they settle them with the tillers of the soil. Sir, the proprietors, instead of settling these lands with the tenants on fair and equitable rent, instead of remaining zamindars as they are as a matter of fact, instead of collecting rents, as they hitherto did, they will play the part of the tenants themselves. They will give all lands which become theirs in bhag to the villagers who as they will have to give heavy bhags to the zamindars, will get but poor recompense for their labour. This is actually done at places and this should be stopped. Surely, Sir, this is inequitable—this is not what the Permanent Settlement contemplated—this is not in the interests of the masses and this is the only reason why I have proposed to the House that the zamindars' private lands wherein a tenant cannot get any occupancy right should cease to exist. Let them either give these lands to those persons on rent or from year to year or for a number of years, but they should not

keep lands as khas lands while they do not actually till them in khas. It is only just and fair that there should be nothing on the statute to prevent these poor people from acquiring the right—I mean the right of occupancy.

Khan Bahadur MUHAMMAD ABDUL MUMIN: Here again I am afraid my friend, the Khan Bahadur, is under a misapprehension. He does not seem to understand the meaning of proprietor's private lands under section 116 of the Act. He thinks that any land which is in possession of the proprietor is his private land. That is not meant by this section. As a matter of fact I may tell him that proprietor's private lands are now very rare. In all the districts in which settlement operations have been completed, we have not come across any proprietor's private lands under the true meaning of this section. Private lands are those which the proprietor had as their khas lands under their direct cultivation since the time of the Permanent Settlement. No such lands are in existence in Bengal so far as I know.

Khan Bahadur Maulvi EKRAMUL HUQ: On a point of information, Sir. Is it not a fact that zamindars treat these lands as private lands?

Khan Bahadur MUHAMMAD ABDUL MUMIN: No, if there are such lands, they come under section 116. But as there are no such lands, it is beyond the scope of the discussion. Supposing, if there are such lands what section 116 really means is to give a certain amount of protection to the landlords in regard to such lands. However, Sir, the question is more or less an academic one and I do not think I need discuss it at length. As I have explained the position now I hope I have been able to remove the mover's misapprehension and I trust he will withdraw it.

The motion of Khan Bahadur Maulvi Ekramul Huq was then by leave of the Council withdrawn.

The following amendment was called but not moved:—

Srijut TARAKNATH MUKERJEA to move that clause 88 shall be omitted.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: I move that after clause 89 (*a*) the following clause be added, namely, "(*aa*) to sub-section (*1*) as amended by clause (*a*) the following proviso be added, namely:—

> 'Provided that a rent-suit may also be instituted where defendant resides if the landlord simply wants a money decree without a charge upon the rent land.'"

Sir, what I want by the addition of this proviso is that where both the tenure-holder and the landlord reside, it will be convenient for both the parties if the suit is heard there irrespective of where the land may be situated. The decretal amount may be treated as a money decree instead of rent decree. This I submit will be convenient to both the parties.

(Here the member cited some High Court ruling in support of his speech but it was quite inaudable at the reporters' table.)

Babu PRANENDRA NARAYAN CHAUDHURI: I oppose this amendment. The practice had all along been to institute suits for rent in the court within whose jurisdiction the property is situated till 1922 when it was decided in the case referred to by the mover of the amendment, that rent-suits may be instituted in the court within the jurisdiction of which the defendant resides, but the effect of the decree will be that of a money decree. The question of relationship of landlord and tenant has got to be decided in every rent suit. A rent suit is therefore different from an ordinary suit for money. The plaintiff has got to adduce evidence showing that relationship of landlord and tenant exists when such a relationship is denied. The defendant, if he sets up title in a third party, has to call for papers from that party. It is desirable therefore that these suits should be instituted in the court within whose jurisdiction the property is situated. The landlord does not suffer much as he has got an establishment in the place. The tenant will often be benefited. Then, Sir, there are certain classes of rent suits, namely, where prayers for ejectment have been made, which have to be instituted in the court within whose jurisdiction the property is situated. When execution has got to be taken out against immovable property it must be taken out in a court within the jurisdiction of which the property is situated. For all these reasons I oppose the amendment.

Mr. JOGESH CHANDRA GUPTA: I cannot understand what serious objection the Treasury Benches can have to accept this amendment which seeks to recover the rent due as money decree. That is the entire scope of the amendment. If the property is in a different place from where the lessor and the lessee resides, then it is to the advantage both of the lessor and the lessee that the suits should be instituted and should be decided in the place where they are residing. Of course, it is well known that if any charge upon the property is brought over or if any consequential relief attached to the land is asked for, then this amendment will enable persons to sue for the recovery of the rent due and to recover it as a money decree and not as rent decree. There ought not to be any objection to an amendment like this. If this is not accepted, then the parties to the suit are the only parties who would suffer. I do not know what objection

Government can have. They cannot say that the judges, munsifs or other officers of a particular locality are more competent to judge a particular class of cases. That plea, Sir, cannot be put forward. If that plea cannot be put forward seriously by the Government, why should Government compell a party when both the parties are the residents of a certain place to fight their cases not in that place but where the property may be situated far and away from the place where both parties reside. I cannot really understand the attitude of the Government. I hope the House will carry this amendment.

12-45 p.m.

The motion of Rai Satyendra Nath Roy Choudhuri Bahadur was then put and a division taken with the following result:—

AYES.

Bagchi, Babu Remes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Promotha Nath.
Basu, Babu Basi Sekhar.
Biswas, Babu Surendra Nath.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Datta, Babu Akhil Chandra.
Dutt, Babu Sarat Kumar.
Ghose, Babu Amarendra Nath.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Pay, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nawsher.
Atiqullah, Mr. Syed Md.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Ghose, Mr. M. C.
Gilchrist, Mr. R. N.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Maulvi Latafat.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur.
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Sarkar, Rai Sahib Rebati Mohan.
Sattar, Khan Sahib Abdus.
Shah, Mr. Gholam Hossain.
Stapleton, Mr. H. E.

The Ayes being 28 and the Noes 40, the motion was lost.

Khan Bahadur Maulvi EKRAMUL HUQ: I move that in clause 89 (*b*) in proposed sub-section (*2*)—

(*a*) in line 1, for the word "may" the word "shall" shall be substituted;

(*b*) after the last word "him" the words "and no other suit by the same landlord shall be entertained by the Court for tenancy held in similar right and equal status by the same tenant under him, within a year of this institution" shall be added.

(*c*) in proviso (*iv*) line 1, after the word "shall" the word "not" shall be inserted.

I shall take clause (*c*) of my amendment first. Herein I have said that a separate court-fee shall not be levied on the plaint. There may be one objection to this and it is that when the amount of rent claimed is about Rs. 75, the amount of court fees to be levied will be higher than what the court fee would be if it were separately levied. The answer to this is such cases will be very rare, and it may be one in a thousand. But all the same if the Member of Government thinks that he cannot accept this part of my amendment, I am ready to withdraw it.

As regards the other two portions, I beg to point out that at the present moment if a landlord wishes to harass his tenants he institutes cases against them for separate tenancies. For each kist due for a particular holding separate suits are instituted, with the result that the tenant has to pay heavy costs in addition for all the land he holds. That is why in my amendment I have said that in case a landlord has to institute a suit let him in that suit combine all the holdings and only institute one suit for the entire holding. I have further provided that in case he has left out some holdings, he will not be able to institute a suit for these holdings within one year. After one year he will be entitled to sue again. I think this will be a great relief to the tenantry against persons who want to oppress and harrass them. I hope Government will be pleased to accept this amendment.

Babu PRANENDRA NARAYAN CHAUDHURI: I oppose all the three amendments that have been moved by Khan Bahadur Maulvi Ekramul Huq. I do not see how a landlord can be compelled to bring one suit only for a number of tenancies. The cause of action is different in each suit. The landlord is therefore entitled to bring separate suits. My friend has overlooked the fact that it will entail great hardship on the tenant also if all his tenancies are put up to sale at once. It will be difficult for him to pay up the entire amount due by him for all the tenancies at once.

The next point is about the payment of court fees. The proposal in the Bill is that the court fees will be levied separately in the case of each suit. Separate decrees are asked for in these cases and therefore the court fees must be paid separately. If they are paid on the total amount claimed and a decree asked for the entire amount, the decree will have the effect of a money decree only. My friend is under a misapprehension that if court fees are paid on the total value they will always be less than when they are paid for separately. That is not so. In many cases, court fees, if paid separately, will be less. On all these grounds, I oppose the amendments.

The motion of Khan Bahadur Maulvi Ekramul Huq was then put and lost.

The following amendments were called but not moved:—

Babu SARAL KUMAR DUTT to move that in clause 89 (*b*) at the end of the proposed sub-section (*2*) of section 144 of the Act, the words "provided that a suit in respect of rent may also be instituted where the defendant resides if the landlord simply wants a money decree without a charge on a rent land" be added.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI to move that to clause 89 (*c*) the following shall be added, namely, "and to that sub-section, as renumbered, after the words 'tenure or holding' the words 'or a portion or share thereof' be inserted."

Mr. BIJOY PRASAD SINGH ROY to move that to clause 89, amending section 144, the following be added, namely:—

"(*d*) after sub-section (*3*), as renumbered, the following shall be added, namely:—

'(*4*) The provisions of this section shall apply *mutatis mutandis* to appeals.'"

Clause 90.

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 90 in the proposed proviso to section 145, line 3, after the word "may" the words "sign and" be inserted.

Khan Bahadur Maulvi AZIZUL HAQUE: I move that in clause 90 after the proposed proviso the following shall be added, namely:—

"Provided further that all notices and processes by the defendants also may be served upon any such naib or gomosta or upon any pleader appearing on behalf of the landlord."

I do not think I have started any new proposition. In view of the fact that certain advantages have been given to the landlords, it would be only fair that notices and processes should be also served upon them. I think it is one of the intentions of the legislature to simplify the decision of rent suits. Difficulty arises mostly owing to the serving of summonses, and I think if notices are served upon the naib or gomosta or the pleader appearing on behalf of the landlord, that ought to be sufficient.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur: I oppose this amendment. I think my friend is aware that notices or processes can be served through the pleader of the party. Therefore, I think all these things are not necessary.

Babu PRANENDRA NARAYAN CHAUDHURI: I oppose the amendment as it is unnecessary. Section 187 (2) of the Bengal Tenancy Act lays down that every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person. I hope, therefore, my friend will withdraw the first part of his amendment.

With regard to the second part, so far as pleaders are concerned, that is also provided for by Order No. III, rule 5 of the Civil Procedure Code, which says that any process served on the pleader of any party or left at the office of ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and unless the court otherwise directs, shall be as effectual for all purposes as if the same had beeu given to, or served on, the party in person. Therefore, I submit that the amendments are unnecessary.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and lost.

1 p.m.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 91, sub-sections (2) and (3) of the proposed section 146A shall be omitted.

Sir, we are now entering upon a new stage in the Bengal Tenancy Act legislation where for the first time I find that Government wants the joint, and not several, liability of all co-tenants even though they may not be made parties to a suit. Clauses (2) and (3) say: "notwithstanding anything contained elsewhere in this Act or in any other

law, a decree for arrears of rent of a tenure or holding and a sale in executation of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit." Surely, Sir, in the twentieth century it is most preposterous to say that even though they are not made parties to a suit the suit will be decreed against them. I do not know what the Hon'ble Member in charge would think if he be made to pay in a suit to which he has never been made a party. That is the ordinary common right of every citizen and I cannot understand why simply because they are tenants, they are to be treated in this way. No explanation is given. On the other hand, I find that the entire body of co-sharer tenants in a tenure or holding shall be deemed to be represented by the defendants in the suit if such defendants include all the co-sharer tenants in the tenure or holding as have at any time during the three years previous to that for which the suit is brought, made any payment of rent for the tenure or holding; and all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent roll. Surely, Sir, this is a departure which, I do not think, will be acceptable to this House. It is only just a few minutes ago that we were discussing the matter of reference to the civil court. I do not think it is fair that in a matter like this where a man may be liable to lose all that he has in this world, he should be deprived of his right and thereafter told to go to litigate in the civil court. I do not think that a more unearthly proposition has ever been brought before the legislature. Sir, I could well understand the summary procedure and distraints and even other drastic remedies, but in the twentieth century to say that a man will be liable even though he is not made a party is a proposition, which I have not been able to understand, and which has originated from the Revenue Department. I think, Sir, this question was settled long ago. It was first taken up in the year 1885 when I find that the Hon'ble Member in charge of the Bill said that often the dispute between the landlord and the tenant was not a question of summary method, but a question of the respective rights of the parties. He laid emphasis on the record-of-rights and said that with the introduction of record-of-rights these things will be settled. I think, after all this, this is a proposal which should not be accepted by the House.

The following motions were called but not moved:—

Khan Bahadur Maulvi MUHAMMAD ISMAIL to move that clause 91 shall be omitted.

KAZI EMDADUL HOQUE to move that in clause 91 sub-section (*3*) of the proposed section 146A, be omitted.

Babu JOGINDRA CHANDRA CHAKRAVARTI and Maulvi KADER BAKSH to move that in clause 91, in proposed section 146A, for sub-sections (*2*) and (*3*), the following sub-section shall be substituted, namely:—

'(*2*) A decree for arrears of rent obtained in a suit in which all the co-sharer tenants are not made parties will operate only as a money decree."

Mr. JOGESH CHANDRA GUPTA: Sir, the two Khan Bahadur Huqs and my learned friend, Mr. Fazl-ul Haq, and Mr. Nurul Haq—these four Huqs—have been trying to take away the huq of the landlords and to give it to others. I think, Sir, that it was conceded even by them that the right to receive rent was the only legitimate right of the landlords. I was always under the impression that according to my friends the landlords ought to get the rent and nothing more than the rent—that was their position as I understood it. But when I read the amendment that has been proposed by Khan Bahadur Azizul Haque I found that he would grudge the rent-receivers—I would not call them landlords by which only some of the Rajas and Maharajas on the other side of the House are designated. But landlords include many others who are worse off than the tenants and therefore I should say that the rent-receivers ought to have some speedy and convenient means of recovering the rent which was the only things my friends to the right were prepared to concede. My friend has said that it is a preposterous proposition to make somebody liable for rent who is not made a party to the suit. It is necessary, Sir, to read the entire provisions of the Act before I proceed further with my remarks. It has been provided that the entire body of co-sharer tenants in a tenure or holding shall for the purposes of sub-section (2) be deemed to be represented by the defendants to the suit if such defendants include (*i*) all the co-sharer tenants in the tenure or holding whose homestead are situated in the village in which the tenure or holding is situated, (*ii*) such of the co-sharer tenants in the tenure or holding as have at any time during the three years previous to that for the rent of which the suit is brought, made any payment for the tenure or holding; and (*iia*) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice of the purchase under sub-section (*3*) of section 12, or section 26E or section 26F, as the case may be, or who having succeeded to an interest by inheritance have given notice of their succession under section 15; and (*iii*) all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent roll. So, these being the safeguards provided, I do not understand what objection my learned friend could have to the procedure that is provided under this amending Bill. If a co-sharer tenant is not resident of the village,

has not been heard of with the last three years and has not made any payment within the last three years, has not given any notice of his interest to the landlord and whose name does not appear in the landlord's rent roll—if there is such a person, then only he will not get notice. At one stage of the discussion I heard my learned friend, Khan Bahadur Azizul Haque, say that equity does not help a sleeping man. But I suppose this law of equity, according to my learned friend, Khan Bahadur Azizul Haque, will only apply when the landlords are concerned and my friend is not prepared to extend that rule of equity when the tenants are concerned.

Then, the next thing that I found the Khan Bahadur to urge against this provision was that the tenants ought to be made a party wherever they may be, even though the landlord may not know their whereabouts and cannot trace out a share however small it may be or however disputed it may be. Otherwise the landlords, I mean the rent-receivers, are not to be entitled to recover the rent from the people who have been recorded in their rent roll and who have been in occupation and have been paying the rent for the previous three years. I should think, Sir, that we have extended the rights of the tenants in many directions and many of their legitimate demands have been conceded. But I should say that we ought not to grudge the rent-receivers the right to recover rent without difficulty. I am here speaking of the poor rent-receivers who have no amlas and gomastas to go round the four corners of the world to find out where a certain heir of the tenant may be. I am just pleading here the cause of poor rent-receivers upon whom if such a duty devolves of going round and finding out from every part of the country all the heirs of a tenants wherever they may be, then it will be impossible for them either to institute a suit for the recovery of rent, or to get the rent which is their proper due. I hope, therefore, my learned friend, the Khan Bahadur, will consider at least the difficulties of the petty rent-receivers and withdraw his amendment.

Maulvi NURUL HUQ CHAUDHURI: Sir, during the course of the debate we have had to deal on many occasions with extraordinary provisions invented for the benefit of the landlords, but I am bound to say that the Government has not yet at any place or at any stage thought it necessary to make the most modest provisions for the sake of the tenants—provisions which under the circumstances of the case may be thought necessary. This section introduces a novel principle in our law. We all know that in rent suits the court of law has been acting so long upon the principle of representation and that is the principle on which the courts have worked as the most equitable and just. It is necessary in every case that every tenant should be made a party to a suit in order that that landlord may obtain a rent decree

and can bring the holding to execution. Exception has been introduced by courts on the principle of representation. What the section now proposes to do is to extend the principle of representation beyond the scope which the courts of law have thought necessary. We can take it that the courts have gone as much as they possibly could on the principles of equity and justice. Therefore, any excess of power that is now being given to landlords to bind by decree all persons whether they may be parties or not is an extension of law in a direction which is inequitable and unfair. Sir, the effect of this legislation will be to introduce fraud wholesale in courts of law. It will be very easy for any landlord to get a decree against some of the tenants and to sell the holding at the back of the others without their knowledge. So long I was under the impression that the policy of Government

1-15 p.m.

was that fraud should on no account be encouraged, but now the idea seems to be that as much fraud as possible should be permitted. And this is all for the benefit of one class of people, that is, the class of landlords, the class which Mr. J. C. Gupta was pleased to call the renters or rent receivers. Sir, one of the most difficult problems in all courts of law is how to prevent the practice of fraud and collusion; and the most important thing is to devise how fraud can be circumvented and collusion prevented. This House should take note of the fact that the proposed new section invites every landlord to have recourse to as much fraud as possible. With my experience of landlords, I do not think that they will refuse to exercise this new right as soon as occasion will arise. It is against all principles of jurisprudence that a party should be bound by a decree against which he had no opportunity to defend himself. It has been said by my friend, Mr. Gupta, that very often it is difficult to know the tenant's whereabouts. It is exactly in such cases that fraud and collusion will be easily practised. The court now enables the landlord to get a decree for arrears of rent against those persons only who are represented in the suit; but to say that simply because the co-sharer tenants live in different villages, the decree obtained against the resident tenants of one village should be binding upon all tenants, is a principle which I do not think can be justified. I oppose this new section because to me it appears that it will give the landlords a very great power to oppress the tenants.

Babu AMARENDRA NATH GHOSE spoke in Bengali, the English translation of which is as follows:—

"Mr. President, Sir, I rise to oppose the amendment. Controversy has been raised to remove some difficulties of the landlords to realise their rent through court. There is no dispute in this House that the landlords are entitled to rent. If any easy procedure is adopted for

collection of rent it will be of advantage both to the landlords and tenants. Those who have any knowledge about this will admit that the serving of the processes, etc., on tenants entail great difficulty on the side of the landlord. Cycle has been introduced nowadays as a result of increment of process-servers pay; the peon comes to serve the notice on cycle, we have to run after his cycle to identify the man on whom processes will be served. Identifier swears affidavit according to his knowledge when the peon gives return according to his own will unless he is rewarded by the party. Consequently order of fresh process is issued by court. He will have to run again after the cyclist peon to have the notice served and every time we have to run after his cycle again till we can satisfy the peon. The number of notices go on increasing daily. This is causing loss to both the landlord and tenant. The section that has been introduced in the proposed Bill is quite sufficient for the purpose. The amendment is unnecessary."

Babu PRANENDRA NARAYAN CHAUDHURI: Sir, I oppose the amendment. Sub-sections (*1*) and (*2*) incorporate the existing law on the subject. There was some conflict of judicial opinion as to joint and several liability of the heirs of the original tenant who made the contract, for the entire rent due, but recently in a Full Bench decision it was held that all persons in possession of land as tenants are under an implied obligation to pay the rent for the land to the landlord whether they get into possession by right of succession or assignment, under the privity of estate which exists between each one of them and the landlord in the whole of the leasehold. Either on this ground or because a contract is implied for payment of rent by all tenants in common in possession of a leasehold, any one of such tenants may be sued for the entire rent due to the landlord. So the question of joint and several liability has been set at rest by this Full Bench decision. The law as to representation of co-sharer tenants by one of them is well settled. As Sir Lawrence Jenkins said in the case of Chamatkarini Dasi *versus* Trigunanath, the authorities sanction the view that where one of a number of tenants is put forward by the rest as their representative, he can be regarded as the sole tenant for the purpose of a suit for arrears of rent within Chapter I4 and the entire tenancy will pass in execution of the decree. No new law has been propounded in these two sub-sections. I do not think Khan Bahadur Maulvi Azizul Haque has any justification for objecting to the law as it has been embodied in these two sub-sections.

In sub-section (*3*) an attempt has been made to state the facts which would constitute representation as exhaustively as possible and to make the law on the point definite and clear, so that neither the landlord nor the tenant may suffer any hardship or inconvenience.

Maulvi SYED NAUSHER ALI: Sir, I will just say one word about this amendment. So far as sub-section (*2*) is concerned, it embodies the law as it exists. My objection is with regard to sub-section (*3*), and I object to the use of the word " shall " in it. It reads thus: " The entire body of co-sharer tenants in a tenure or holding *shall* for the purposes of sub-section (*2*) be deemed to be represented by the defendants to the suit if such defendants include..... " It takes away the discretion of the court to judge whether certain persons actually represent the entire body of co-sharer tenants or not. Sir, it has already been made clear by members on this side of the House that this will lead to fraud and collusion.

Mr. PRESIDENT: Since when have you acquired this love for the words " fraud " and " collusion." Perhaps you have got the cue from Maulvi Nurul Haque Chaudhuri.

Maulvi SYED NAUSHER ALI: Sir, I have no love for them: I want to avoid them. (Cries of—Louder please;!) The House is thin, so it is no use raising my voice. Look to clause (*ii*) of sub-section (*3*): It says that any man who pays any rent at any time during the three years previous to that for the rent whereof the suit is brought, is made a party to the suit, he will be deemed to represent the entire body of tenants. I submit that this is a most dangerous provision. I would cite the case of an ordinary Muhammadan family of cultivators. In such a family there are a large number of persons who are generally illiterate. If one man is allowed to represent the whole family, and if he is a fraudulent man, he can easily collude with the landlord's tahsildar or gomastha and act counter to the interest of the other members of the family. This will create a dangerous state of things, and I appeal to the Government—I have never appealed up till now as I have no faith in them—no I withdraw my appeal and submit to the House at least to substitute the word " may " for the word " shall " in sub-section (*3*).

The motion that in clause 91 sub-section (*2*) and (*3*) of proposed section 146A shall be omitted was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ehramul
Huq, Mr. A. K. Fazl-ul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Rahman, Maulvi Shamsur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Bagchi, Babu Rames Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Farequi, Khan Bahadur K. G. M.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Momin, Khan Bahadur Muhammad Abdul.
Naskar, Babu Ham Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Ray, Dr. Bidhan Chandra.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Roy Choudhuri, Rai Bahadur Satyendra Nath.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Srijut Nagendra Nath.
Shah, Mr. Ghelam Hossain.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 14 and the Noes 54, the motion was lost.

Adjournment.

The Council was then adjourned till 2·45 p.m. on Monday, the 3rd September, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Monday, the 3rd September, 1928, at 2-45 p.m.

Present:

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Minister and 102 nominated and elected members.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was resumed.

The following amendments were called but not moved:—

Mr. SYED MD. ATIQULLAH to move that in the proposed new section 146A (3) (*i*), line 1, after the word "tenants" the words "or their heirs" be inserted.

Babu AMULYA CHANDRA DATTA to move that in clause 91 after proposed section 146A (3) (*iii*), the following shall be inserted, namely:—

"(*iv*) such co-sharer tenants as are in possession of the holding either on their own behalf or on behalf of all the co-sharer tenants"

and clause "(*iv*)" shall be re-numbered as clause "(*v*)."

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 91 proposed section 146B shall be omitted.

Section 146B runs as follows:—

"(*1*) Notwithstanding anything contained in the Indian Limitation Act, 1908, any person who claims that he should have been joined as a co-sharer tenant defendant in a suit for the recovery of arrears of rent due in respect of a tenure or holding may, at any time before the hearing of the suit has been commenced, apply to be made a party

defendant to the suit, and the court shall consider his claim, and if it finds that he should have been so joined shall join him as a party defendant:

Provided that if any such person at any time in the course of such suit pays into Court the full amount of the claim together with such costs as the Court may direct, the suit shall be dismissed and in any such case the provisions of section 171 shall apply.

(2) The provisions of sub-sections (2) and (3) of section 146A, shall, so far as may be, apply in the case of a co-sharer tenant joined as a defendant under sub-section (1) of this section".

This is practically in continuation of my amendment which I moved the other day. I know the House will reject it, but still I think it necessary to move that the section be omitted.

Babu PRANENDRA NARAYAN CHAUDHURI: I oppose the amendment. The proposal in the Bill is that any person who claims that he should have been joined as a co-sharer tenant defendant in a suit for the recovery of rent due in respect of a tenure or holding should be made a party defendant if he applies to the Court before the commencement of the hearing of the suit and if the Court thinks he is a necessary party. This is just and equitable. If such a person comes in and applies in time to be made a party defendant, he should be made party defendant, because he is vitally interested in the result of the suit and because he may, under certain circumstances, be liable under the decree although he has not been made a party defendant to the suit. The proviso does not lay down anything new. It says that if he is found to be a co-sharer, he may pay into Court the full amount of the claim together with such costs as the Court may direct and the suit shall thereupon be dismissed and the provisions of section 171 shall apply. As the House has accepted the provisions of section 146A, I do not think there can be any objection to the addition of sub-section (2) to this section.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and lost.

The following amendments were called but not moved:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, and Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 91, the proviso to the proposed section 146B (1) shall be omitted.

Babu JOGINDRA CHANDRA CHAKRAVARTI, Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR-RAHMAN to move that in clause 91, sub-section (2) of proposed section 146B shall be omitted.

Clause 94.

Rai HARENDRA NATH CHAUDHURI to move that sub-clause (*3*) of clause 94 be omitted.

If this amendment No. 1161 be not carried Rai Harendra Nath Chaudhuri to move that in sub-clause (*3*), of clause 94, the words beginning with "except in" and ending with "clause (*b*) (*2*)" be omitted.

Babu AKHIL CHANDRA DATTA to move that in clause 94 (*6*) the proposed clauses (*d1*) and (*d2*) be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 94 (*6*) proposed clause (*d1*) be omitted.

Clause (*d1*) is a novel form of procedure which will for the first time be introduced in this country. It says "Notwithstanding anything contained in the Code of Civil Procedure, 1908, or any rules made thereunder, the plaintiff in a suit for recovery of arrear of rent shall not be required to supply any identifier for the purpose of serving the summons on the defendant or any witness, and the serving officer." I do not know what reason the Government has to designate this officer as "serving officer"—"shall serve the summons after due enquiry as to the identity of the person on whom or the house or property where the summons is served. The serving officer shall serve the summons in the presence of at least two persons and he shall, whenever possible, require the signature of those persons to be endorsed on the original summons and where he is unable to serve the summons, he shall, whenever possible, require the signatures of two persons of the locality to be so endorsed."

3 p.m.

I cannot do better than quote the opinion of a late Law Member when an almost similar provision was attempted to be introduced, who said that "facilities for recovering rents in Bengal should be sought for not so much in novel forms of procedure as a trustworthy record of tenancies." In the year 1928, when Government has introduced a trustworthy record of tenancies, this novel form of procedure is sought to be introduced. The better thing would be to provide that unless the tenant pays, Government should pay. In a procedure like this in which the serving officer, whoever he may be—I do not know whether it is required that he should be a judicial officer, who shall serve summons—has to find out the identity of the person on whom the summons is to be served and no identifier would be required, how is it possible for the

person to enquire whether that particular person on whom he is serving the summons is the proper person? However, the serving officer will serve the summons—never mind who is the person—and you will find that certain officers have to serve summons, on whom it does not matter, but anyone is reported to be the man required and he is the man on whom the summons is served. I do not know from whose brain this novel form of procedure has emanated, and I certainly question the intelligence of the persons who are responsible for this novel form of procedure. If it is suggested that the notices should be served on the tenant by registered post, the Government of Bengal will say that the Postal Department is under the Government of India, and the Postal Department is not at all anxious to take the responsibility for serving of summons. Now, any man can come back from the village and say that he made proper enquiries and served the summons to the proper person; so I think my amendment should be accepted.

Babu PRANENDRA NARAYAN CHAUDHURI: I oppose the amendment. This clause was inserted on the recommendation of the Select Committee. The Select Committee said they were distinctly of opinion that the present procedure of employment of identifier by the plaintiff when the summons was served was expensive and inefficient. They, therefore, considered the necessity of doing away with that procedure and substituted the service of summonses in the presence of witnesses. The reason for inserting this provision has been explained by the Select Committee. The Civil Procedure Code does not contain any provision that an identifier is necessary in every case. Rules 17 and 18 of Order V of the Civil Procedure Code speak of an identifier, if any. The peon can find out the identity of the person and the house in which the person lives after enquiry and serve the summons properly. The provision was inserted for reasons mentioned by me.

Mr. JOGESH CHANDRA GUPTA: My friend Khan Bahadur Maulvi Azizul Haque says that it is a very novel procedure that is being sought to be introduced by this amending Bill. My friend pins his faith upon the identifier and he thinks that if there is a provision for an identifier then there will be no difficulty about the proper identification of the defendant. I thought my learned friend, being a practising lawyer in the mufassal, knew very well what harm the provision of an identifier had caused in many cases. I do not think I would be making a very novel disclosure if I say that the identifier required under this section is generally a servant in the house of the pleader who files the rent suit. It has been the common experience of many a munsif in the mufassal that the identifier mentioned is invariably the same person who happens to be a servant either of the pleader or of the pleader's clerk. My learned friend has probably forgotten the

story told by Babu Amarendra Nath Ghosh yesterday that this provision of identifier only enables the peon to charge the landlord a little more gratification for agreeing to name that particular individual who is available to swear the affidavit in the court proceedings. In the next place, as Amarendra Babu pointed out yesterday, in order to ensure the service of summons, it would be necessary to beat the defendant and at the end to have a criminal suit instituted and to file a certified copy of the petition of complaint to show that really identification and service of summons were complete, and the notice reached the defendant all right. To have two persons to endorse the service of summons as provided is much more satisfactory than to have a paid identifier like that. I thought that my learned friend would recognise that instead of having an identifier, it gives more protection to the defendant to have two persons of the village to endorse that the process had been served in their presence. The sections says that the summons must be served in the presence of at least two persons (A VOICE: "Not of the village.") of any place; at present the summons is served on the identification of one person, but it is here provided that the summons shall be served in the presence of two persons, and I think two is better than one, and that ought to be admitted. My friend the Khan Bahadur in order to have a dig at the landlord will not even admit an obvious proposition like that. I say there is absolutely nothing in this; on the other hand, the doing away with an identifier is bound to put a stop to unlawful practices.

The motion that in clause 94 (*6*) proposed clause (*dl*) be omitted was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Karim, Maulvi Abdul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rabati Mohan.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Bagchi, Babu Romes Chandra.
Banerjee, Dr. Pramathanath.
Banerjee, Babu Promotha Nath.
Blair, Mr. J. R.
Bose, Babu Sejoy Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Dutt, Babu Saral Kumar.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hussain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Lala, Babu Sarada Kripa.

Maiti, Babu Mahendra Nath.
Mitter, the Hon'ble Sir Prevash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Babu Manmatha Nath.
Ray, Dr. Bidhan Chandra.
Ray, Mr. Bijay Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Sachse, Mr. F. A.
Sarker, Babu Natiniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

The Ayes being 15 and the Noes 51, the motion was lost.

The following amendments were called but not moved:—

Babu SARAL KUMAR DUTT to move that in clause 94 (*6*), section 148, in the proposed clause (*d1*) after the words "be so endorsed" the words "after stating the reasons for his inability to serve the summons in such case" be added.

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 94 (*6*), last line, in the proposed clause (*d1*), after the word "endorsed" the following be added, namely:—

"If the defendant or the witness could not be found by the serving officer he shall affix the summons on the outer door of their house. The service on one of the several joint tenants in their residence shall be presumed to be good service on all. Where the serving officer reports non-service the Court shall send the summons in a registered cover to the residence of the defendant. Where the defendant or witness has no residence within the jurisdiction of the Court issuing the process it shall send the summons in a registered cover to the address of the defendant or witness. The receipt of registration shall be accepted a sufficient proof of such service"

Rai HARENDRANATH CHAUDHURI to move that sub-clause (*6*), of clause 94, in the proposed clause (*d2*), lines 14-15, the following words be omitted, namely, "and in default of compliance with such notice."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagachá, Mymensingh: I beg to move that in clause 94 (*6*) after the proposed clause (*6*) (*d2*), the following clauses shall be inserted, namely:—

"(*d3*) Notwithstanding anything contained in the Code of Civil Procedure the summons in all rent suits shall contain a concise statement of the facts alleged in the plaint and shall be in the prescribed form. It will not be necessary to serve any copy of plaint with summons.

"(*d4*) Notices and other processes on parties or witnesses shall be served in the manner prescribed for service of summons in clause (*d1*) and in case of defendants or witnesses residing outside the jurisdiction of the Court the processes on them shall always be served through registered post as prescribed in clause (*d*)."

This is moved with a view to avoid unnecessary delay and expense.

[At 3-10 p.m. the Council was adjourned and it re-assembled at 3-25 p.m.]

Babu PRANENDRA NARAYAN CHAUDHURI: Sir, I oppose the amendment proposed. The proposal is that the summons shall contain only a concise statement and not all the particulars alleged in the plaint and a copy of the plaint will not be served upon the defendant. Sir, this was the original proposal made by the Committee presided over by Sir John Kerr. The matter was then referred to the High Court for opinion and the Hon'ble the Chief Justice and the Judges of the High Court think that the provision that the summons shall contain only a concise statement and not all the particulars alleged in the plaint, and a copy of the plaint will not be served upon the defendant, may lead to abuse. They consider that the concise statement in order that it may convey information to the defendant on all the material facts alleged in the plaint must be carefully made by a responsible officer of the court and, in order that this may be properly done, additional staff would probably be necessary as the number of rent suit is very large in every court. They think that the defendant in a rent suit should have a copy of the entire plaint so that he may without incurring the expenses of going to court, and taking a copy of the plaint, be able to decide whether he should contest the suit.

The High Court did not also favour the proposal of sending summons by registered post as there will be no affidavit of service and postal peons cannot be examined in large numbers without great inconvenience to all concerned. The proposals were dropped as the opinion of the High Court was against their acceptance.

The motion of Maharaja Shashi Kanta Acharjya Chaudhuri was then put and lost.

Khan Bahadur Maulvi AZIZUL HAQUE: I move that clause 94 (7) shall be omitted.

Sir, I find that a series of troubles are intended for everybody except the landlords of Bengal under the provisions of the Bill and this is an addition to the already existing troubles of the Judicial officers, even though Government admits that Judicial officers are overworked. There is present here a representative of the Judicial Service in this Council, but I do not know in what light he will take it. Probably he will follow the tune already set up by Government

The following amendment was called but not moved:—

Babu AMARENDRA NATH GHOSE to move that in clause 94 for clause (7) the following shall be substituted, namely:—

"(7) for clause (e) the following clause shall be substituted, namely:—

'(e) the tenant may file a written statement or make a verbal defence which shall be taken into consideration by the Court in the same way as a written statement.'"

Babu PRANENDRA NARAYAN CHAUDHURI: Sir, I oppose the amendment moved by my friend Khan Bahadur Azizul Haque. The acceptance of this amendment will restore the provision of the Act which is that no written statement shall be filed without the leave of the Court. The provision in this Bill is that the Court should record its reasons for granting or refusing the leave. This means that the attention of the Court will be drawn when the written statement is sought to be filed to the facts stated in it, and the Court will then decide whether the written statement should be accepted or not. This is a very desirable provision and should be accepted by the House.

The motion that clause 94 (7) shall be omitted was then put and lost.

Babu ROMES CHANDRA BACCHI: I beg to move.....

Mr. W. H. NELSON: On a point of order. This appears to me to be an amendment of the Court-Fees Act and not of this Bill. This amendment does not amend the Tenancy Act in any material particular. This amendment touches the Court-Fees Act and is really an amendment of the Court-Fees Act.

Mr. PRESIDENT: I am afraid this amendment must have escaped our vigilance. It is clearly an amendment of the Court-Fees Act and I therefore rule it out of order.

The following amendment was ruled out of order:—

Babu ROMES CHANDRA BACCHI to move that in clause 94 (7), after the words "such leave" the words "and no court-fee shall be charged for an application for such leave" shall be added.

The following amendment was called but not moved:—

Maharaj Kumar SRIS CHANDRA NANDY to move that after clause 94 (7) the following be added, namely:—

"(7a) after clause (e) the following clause shall be added, namely:—

'(ee) The Court may in its discretion consolidate several suits of the same plaintiff and pass one order for all in ex-parte cases.'"

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 94, sub-clause (9) be omitted.

This sub-clause (9) seeks to give a novel right to the plaintiffs in rent suits. It is not only novel but it seems to be extremely cumbrous. It is very often said that this Bill will reduce litigation. I do not know how a provision like this will reduce litigation; it will simply increase it and I hope the House will be pleased to see that the provision that if a defendant does not appear the presumption will be that he admits certain things. It is extremely novel and I do not think any party will really be benefited by the introduction of such a clause. I therefore propose that the clause be omitted.

Babu PRANENDRA NARAYAN CHAUDHURI: I beg to oppose this amendment. This clause provides that in certain cases, namely, where the rent is entered in a record-of-rights finally published or where there is a registered lease or where there is a previous decree between the parties the plaintiff may proceed to have a special summons issued on the defendant and if the defendant fails to appear it would not be necessary for the court to record any evidence but the court may enter final judgment for the amount mentioned in the decree together with interest at 6 per cent. per annum. The only novelty in the proposition is that no evidence shall be recorded. In India Order 37 of the Civil Procedure Code provides for decrees being made without recording any evidence in the case of negotiable instruments under certain circumstances, by some of the High Courts and some other courts. In England under the rules of the Supreme Court in cases of liquidated claims, a plaintiff can in default of appearance of the defendant enter final judgment without any evidence being recorded, for any sum not exceeding the amount mentioned in the writ. In the County Courts Act of 1888 also there is a similar provision. The Registrar may, under that Act, in the case of a liquidated demand, enter final judgment after summons has been issued on the defendant, when the defendant does not give any notice of his intention to appear and contest the case. So the proposition is not novel or as novel as it appears to some of the members. The practice obtains in England and there has been no failure of justice there.

Then the question is whether this provision can safely be extended to India without any risk of failure of justice. The Civil Justice Committee thoroughly went into the matter and were of opinion that this system could be safely introduced into our courts. I will here read a few lines from their report: "It would appear that the main intention in directing that evidence should be recorded before an ex parte decree is passed is to provide a safeguard for the absent defendant, but in practice the recording of such evidence does not in our opinion provide

any safeguard worth the name. A court is not likely in an ordinary case to be in a better position to ascertain the truth or falsity of the claim by examining the plaintiff himself and his witnesses, if any. If a plaintiff is sufficiently dishonest to bring a false claim he will not as a rule be averse to coming forward to swear to its truth and it is unfortunately a matter of experience that a dishonest man who is ready to bring a false claim has no difficulty whatever in procuring dishonest witnesses to support it. The plaintiff runs no appreciable additional risk by swearing to a false claim. Under the provisions of Order VI he has to verify his case and he is exposed to a criminal prosecution if he files a false suit knowing it to be false or if he makes a verification untrue to his knowledge. He does not increase his risk appreciably by coming into the witness box in an ex parte proceeding and swearing falsely to the truth of his plaint. In respect of the false witnesses to support his claim it is a matter of common knowledge that it is by no means easy to trace such witnesses after the ex parte proceedings have been decided or even when it is possible to trace them, to bring them to account in a criminal prosecution." The Civil Justice Committee recommended the introduction of this practice in the case of all liquidated claims. The Bill has, however, restricted the introduction of the practice to the three classes specified by me, thereby safeguarding the interests of many of the defendants. It is left to the discretion of the court if in any particular case it should proceed under this section or try the suit in a regular way. It has also been provided here that no statement in the plaint regarding the nature, area and incidents, or regarding any liability other than the rent should be taken into consideration in any subsequent proceedings. That also safeguards the defendant's interests to a great extent. So that I think that this procedure can safely be adopted without any risk of failure of justice.

In sub-clause (*3*) it has been provided that after a decree a registered postcard should be issued to the defendant. The defendant should then also be in a position to know of the decree. The Bill has further provided facilities for setting aside a decree when there is a bona fide defence put forward by the defendant. This clause if adopted will lead to a speedy disposal of suits and that without much expense. I, therefore, hope that this House will not accept this amendment.

The motion that in clause 94, sub-clause (*9*) be omitted was put and lost.

The following amendments were called but not moved:—

Rai HARENDRANATH CHAUDHURI to move that in sub-clause (*9*) of clause 94, in proposed clause (*f1*), line 12, for the word "may" after the word "Court" the word "shall" be substituted.

Mr. BIJOY PRASAD SINGH ROY to move that to clause 94, in the proposed clause (*f1*) (*ii*), in section 148, lines 10 and 11, for the words "at the rate of 6 per cent." the words "not exceeding 12½ per cent." be substituted.

Rai HARENDRANATH CHAUDHURI to move that in clause 94 (*9*), in the second proviso to sub-clause (*ii*) of the proposed clause (*f1*), line 9, after the word "due" the following words be inserted, namely, "and statements based on entries made in the record-of-rights."

Babu JATINDRA NATH CHAKRABURTTY to move that in clause 94 (*9*), the proposed clauses (*f1*) (*iii*) and (*iv*) be omitted.

Mr. BIJOY PRASAD SINGH ROY: I beg to move that to clause 94, in the proposed clause (*f1*) (*iv*), lines 7 and 8, before the words "apply to the Court" the words "within three months from the date of the decree" shall be inserted.

There is no time limit and in order to make it more definite I suggest that the words "within three months from the date of a decree" shall be inserted.

Babu PRANENDRA NARAYAN CHAUDHURI: I oppose this amendment. This provision is absolutely unnecessary. Article 164 of the First Schedule to the Limitation Act provides the period of limitation. It is stated there that the period of limitation for an application by a defendant for an order to set aside a decree passed ex parte "is 30 days from the date of the decree or where the summons was not duly served, when the applicant has knowledge of the decree.".

Mr. BIJOY PRASAD SINGH ROY: I beg leave to withdraw my amendment.

The motion was then, by leave of the Council, withdrawn.

Khan Bahadur Maulvi AZIZUL HAQUE: I beg to move that in clause 94 (*9*) in proposed clause 9 (*f1*) (*iv*), lines 14 to 16, the words "upon his deposting one-half of the amount recoverable under the decree" be omitted.

I have the misfortune of moving amendments one after another knowing full well the fate of those amendments but I hope and still hope for one act of bare justice from Government as well as from my friend Mr. J. C. Gupta. It seems to me that Mr. J. C. Gupta has become an expert in revenue matters as some members on his side. I hope that I am not appealing in vain. If the members of the House will kindly look up this clause they will find that this clause is providing for a defendant to come to court if a summons is not duly served upon him. I hope Government will be pleased to note that it is

accepted that the summons is not duly served; it is accepted that there is a prima facie case for a bona fide defence; I want to know in the name of what equity Government still want that the defendant must deposit one-half of the amount recoverable. I can understand the case of one who has no defence at all or the case of one on whom summons has been served, and who has come to court, but in a case where it is admitted that summons has not been duly served (that is the language) and where the court is satisfied that summons has not been duly served and thinks that there is a prima facie case for a bona fide defence, I want to know by what canons of justice you want the defendant to pay one-half of the rent. Thereby you are practically nullifying the salutary provision that nobody should be asked to pay till the sum is due. I did not know that Mr. J. C. Gupta has found that all amendments from this side of the House are against the interest of the landlords and that he will not see obvious things. It is no question of landlord or tenant. My friend is so obsessed with love for landlords that he will not see that it is not a question of landlord and tenant, but it is a question pure and simple of procedure. Our duty is to point out defects in the Bill and I hope Government will be pleased to accept my suggestion and delete the clause otherwise it will remain as one of the iniquitous provisions.

3-45 p.m.

Babu PRANENDRA NARAYAN CHAUDHURI: Sir, I oppose the amendment. (Hear hear.) As I have already submitted, these cases are limited to only three classes, viz., where the suit is based on a record-of-rights, or on a registered lease, or on a previous decree; so that practically the only question for decision would be whether there had been a payment of rent or not. We know very well how such pleas are advanced in the courts, just in order to avoid depositing the money in the court. If the money is admitted to be due he has to pay it into court. The Bill provides that only half the amount shall be deposited. If this provision be omitted, the provisions of section 153A will apply and then the tenant will have to deposit the amount which he admits, which might in some cases be more than 50 per cent.

Mr. JOGESH CHANDRA GUPTA: Sir, my friend, Khan Bahadur Azizul Haque, has been pleased to give me a place of honour in the last speech that he delivered. He also mentioned me as an authority in revenue matters, which I hope he would ask all the landlords present hear to note and appreciate. (Hear, hear.) But the whole point seems to me to be this. My learned friend does not see the necessity of requiring the deposit of half the amount that has already been decreed under these proceedings. My friend, being obsessed with a love for the tenants, will even forget that this section provides for special summons, and I hope he does not think that special summons is *no* summons.

Well, if the summons is not served, he can come and take advantage under this section without depositing the full amount of fees or the admitted amount, as required under section 153A. On account of his overzealousness for the tenant, my friend has overlooked that this section gives the tenant an advantage of depositing half the amount and not the whole amount of rent due, as is required under other sections.

In the second place, Sir, if my learned friend would try to be quite fair and unbiassed, he would see that unless some such provision is made, there cannot be expected to be a finality in the decision; because if the tenant has not got to fork out a single farthing, he might come after receiving a registered postcard as provided and say "I want to re-open the case," simply to delay the matter further. The whole object of this provision in the amending Bill is to avoid law's delays, and is based on the recommendations of the Civil Justice Committee, and not of anybody obsessed with a love for the landlords. I hope the Khan Bahadur in moving amendments in future—and especially while making individual appeals as he has made to me—will see that there is some reason behind them which will enable an individual member to respond to his appeal.

The motion of Khan Bahadur Maulvi Azizul Haque was then put and lost.

The following amendments were called but not moved:—

Rai HARENDRANATH CHAUDHURI and Mr. BIJOY PROSAD SINGH ROY to move that in sub-clause (*9*) of clause 94, in sub-clause (*iv*) of proposed clause (*fl*) lines 14 and 15 the words "one-half of" be omitted.

Kazi EMDADUL HOQUE to move that in clause 94 (*a*), in the proposed clause (*fl*) (*iv*), in the proposed section 148, after the words "recoverable under the decree" the words "or furnishing security for the same" be inserted.

Babu SARAL KUMAR DUTT to move that in clause 94 (*9*), in section 148 of the Act in the proposed clause (*fl*) (*iv*), lines 18 and 19, after the words "all or any of the other defendants also" the words "no deposit will be required where the relationship is denied and in cases of dispute about rates of rent only admitted dues will be required to be deposited," be added.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 94 (*9*) the following proviso be added to the proposed clause (*fl*), sub-clause (*iv*), of section 148 of the Act:—

"Provided that no deposit will be necessary where the relationship is denied and the rate of rental is seriously disputed."

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 94 (*11*), in the proposed clause (*gg*), line 6, after the word "decree" the words "or plaint" be inserted.

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 94 (*11*), after the proposed clause (*gg*), the following be added, namely:—

"(*ggg*) no notice for the settlement of the terms of sale proclamation under order 21, rule 66, Civil Procedure Code, nor any process of attachment shall be necessary in executing the rent decrees against the defaulting tenure or holding."

Babu SARAL KUMAR DUTT: Sir, I beg to move formally the amendment which stands in my name, viz., that at the end of clause 94 (*12*), amending section 148 (*h*) of the Act, the following be added, namely, "after the words 'shall not be made' the words 'as a rent decree but can be executed as a money-decree' be inserted."

Babu PRANENDRA NARAYAN CHAUDHURI: Sir, I oppose this amendment as it is unnecessary.

There is another reason also why this should be opposed. Section 148 (*h*) has not been touched by any provision of the Bill. However, the reason for my opposing it is that it has been held in a recent Privy Council decision that the prohibition contained in section 148 (*h*) refers only to a decree obtained by the landlord under section 65 of the Bengal Tenancy Act. The decrees can be executed as money decrees. So this amendment is not necessary. The legislature must be taken to know the interpretation put on the section by the Courts, and since no amendment has been proposed in the Bill, the interpretation given to this section has been accepted by the legislature.

The motion of Babu Saral Kumar Dutt was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Prometha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Bose, Babu Bajoy Krishna.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Choudhury, Maulvi Khorshed Alam.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukerjee, Srijut Taraknath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Mr. A. F. M. Abdur-Reikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.

Ray, Srijut Radha Gobinda.
Ray, Dr. Bidhan Chandra.
Ray, Mr. Bijay Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Suhrawardy, Mr. H. S.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Naueher.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Casselis, Mr. A.
Chaudhuri, Babu Pranandra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Ghose, Mr. M. C.
Gilchrist, Mr. R. N.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Huq, Mr. A. K. Fazl-ul.
Hussain, Maulvi Latafat.
James, Mr. F. E.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Mitter, the Hon'ble Sir Provash Chunder.
Momin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. G. R.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur.
Rahman, Mr. A. F.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Reid, Mr. R. N.
Sashse, Mr. P. A.
Sarkar, Rai Sahib Rebati Mohan.
Sattar, Mr. Abdeel Razak Hajee Abdeel.
Solaiman, Maulvi Muhammad.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

The Ayes being 40 and the Noes 42, the motion was lost.

Clause 95.

The following motions were called but not moved:—

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 95, in proposed section 148A (*1*), line 1, for the word "may" the word "shall" be substituted.

Mr. BIJOY PRASAD SINGH ROY to move that in clause 95 to the proviso to sub-section (*4*), of the proposed section 148A, the following shall be added, namely, "by the District Judge on report being made by the Court in which the first suit was instituted."

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I beg to move, with your permission, my amendment in a slightly modified form. I should like to move the amendment in this form:—

"That in clause 95, in the proposed section 148A (*6*), line 3, after the words 'this section shall' the words 'so far as may be, specify separately the amounts payable to each co-sharer and shall' shall be inserted."

4 p.m.

That is to say, with these words this sub-section (6) of section 148A will stand thus: "a decree passed by the court for the rent claimed in a suit brought in accordance with the foregoing provision of this section shall, so far as may be, specify separately the amounts payable to each co-sharer and shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord, or an entire body of landlords, in a suit brought for the rent due to all the co-sharers."

I have made a slight change in the words keeping the meaning perfectly the same. My reason for bringing forward this amendment is this. Section 148A empowers a co-sharer landlord to institute a suit to recover the rent due to him in respect of his share; this section also lays down that the courts in such a case shall issue summons to the other co-sharers to join in the suit if they so choose.

Mr. PRESIDENT: Let me clear up one point. I think your intention is not to move your amendment as it is on paper, but to move this new one on short notice.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Yes, Sir.

Mr. PRESIDENT: You have my permission to move it.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Well, Sir, after this is done and when all the co-sharer landlords join in the suit, the section lays down that the amount due to these co-sharer landlords will be decreed and the decree shall be as effectual as a decree obtained by a sole landlord, or an entire body of landlords in a suit brought for the rent due to all the co-sharers. What I want is that the decree shall specify separately the amount due to each co-sharer landlord, because later on it is provided in sub-clause (c) of section 148A "that after the sale when the costs due to the decree-holders are paid and if there remains a balance, after those sums have been paid, there shall be paid therefrom to the decree-holders and to any defendant landlords who have not joined as plaintiffs, but have made application....." It is necessary therefore that unless the amount due to each co-sharer landlord is separately shown, it will be difficult for the court to make out how much is due to each. The object of my amendment is to make the procedure simpler and to make it easy for the court to find out how much is due to each co-sharer landlord. In that view, Sir, I submit that my amendment should be accepted.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): Sir, in the form in which Babu Jogindra Chandra Chakravarti has now moved the amendment, we are prepared to accept it.

The motion of Babu Jogindra Chandra Chakravarti was then put and agreed to.

Babu NAGENDRA NARAYAN RAY: I beg to move that in clause 95, proposed section 148A (8) (c), line 2, after the words "shall be paid" the words "after a notice to the judgment-debtor" be inserted.

The reason for my moving this amendment is that the judgment-debtor should be given a chance of hearing if he has got anything to say against payment of further sums from the balance as mentioned in clause (c) of sub-section (8) of the proposed section 148A. It may be urged against this amendment that service of any notice upon the judgment-debtor under this clause is needless inasmuch as he is a party in a pending case in execution. In theory it is all right; but in practice it is otherwise. In mufassal we usually see that though the judgment-debtor is a party in a pending case in execution he seldom appears. The execution proceedings are almost always exparte. Such being the case in order to avoid multiplicity of suits a notice should be given to the judgment-debtor. Further, clause (ii) of sub-section (8) of the proposed section 148C. provides that—if the judgment-debtor disputes the right of the decree-holder or of the co-sharer landlord who has been made a party defendant to receive any sum on account of rent under clause (c), the court shall determine the dispute and the determination shall have the force of a decree.

In view of this provision also a notice as contemplated by my amendment should be given to the judgment-debtor. For, how can he be expected to dispute, if he has a good reason to dispute, the right of the decree-holder or other co-sharer landlord to receive any sum on account of rent under clause (c), if the execution proceedings are exparte?

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I support the motion which has just been moved, because it seems to me that it is a perfectly reasonable suggestion. In sub-clause (c) of clause (8) it is laid down that "if there remains a balance after these sums have been paid, there shall be paid therefrom to the decree-holders....." In such cases, I submit, it is only fair and proper that a notice should be issued to the judgment-debtor, or his pleader, if any, should be informed of the fact that the sale-proceeds are going to be distributed amongst the decree-holders, or other co-sharer landlords, if any, who have joined. It will not inconvenience any body; on the contrary, if the notice is issued, and distribution made afterwards, there will be

the least chance of further trouble later on, and no one will be able say that the distribution has been unfair. In this view, Sir, I suppo the amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, if tl mover of the amendment and his supporter will sligtly modify it, v are prepared to accept it. The modification which I suggest is thi "Provided that the court shall issue a notice to the judgment-debt or his pleader, if any, before ordering any such payment." Our poi is this. If the judgment-debtor is already represented by a pleade it will be a useless waste of time and money to serve a notice again c him personally. If they would accept the amendment in this form, have no objection.

Mr. PRESIDENT: Are you willing to accept it Mr. Ray?

Babu NAGENDRA NARAYAN RAY: The object of my amen ment is different and I do not accept it.

Babu JOGINDRA CHANDRA CHAKRAVARTI: So far as I a concerned I am quite prepared to accept the amendment in the for proposed by the Hon'ble Member.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, if Nagendi Babu moves his amendment we shall oppose it, but I ask your permi sion to move the amendment in this form.

Mr. PRESIDENT: I think the best course for me to adopt woul be to put Nagendra Babu's amendment first and in the event of its n being carried, put the proviso suggested by Sir Provash as his amend ment on short notice.

The motion of Babu Nagendra Narayan Ray was then put and division taken by the raising of hands with the result that the motio was declared lost.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I mov this amendment, viz., "Provided that the court shall issue a notice t the judgment-debtor, or his pleader, if any, before ordering any suc payment."

Mr. PRESIDENT: Do you want to add this as a proviso to Nagendr Babu's amendment?

The Hon'ble Sir PROVASH CHUNDER MITTER: No, Sir, min is a self-contained one, viz., that in clause 95, after the proposed sec tion 148A (*3*) (*c*) the following proviso shall be inserted, viz., "pro vided that the court shall issue a notice to the judgment-debtor, or hi pleader, if any, before ordering any such payment."

The motion was put and agreed to.

4-15 p.m.

Srijut NAGENDRA NATH SEN: I move in the absence of Rai Harendranath Chaudhuri in whose name the motion stands that in clause 95, in sub-section (*9*), of the proposed section 148A, lines 3 and 4, after the words " defendant thereto " the following words be inserted, namely, " and duly served with summons issued under sub-section (*2*)."

Sir, the procedure under section 148A is somewhat of a novel character. Sub-clause (*1*) of that section reads " A co-sharer landlord may institute a suit to recover the rent due to him in respect of his share in a tenure or holding, by making all the remaining co-sharer landlords parties defendant to the suit, and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding." Sub-clause (*9*) as proposed in the Bill says: " When a suit has been instituted under the provisions of sub-section (*1*), no co-sharer landlord, who has been made a party defendant thereto, shall be entitled to recover, save as co-plaintiff in that suit, any rent in respect of the tenure or holding for the period in suit or for any period previous thereto." The proposed amendment wants to add that before the Court can take action under this sub-section a notice to the landlord as provided by sub-clause (*2*) must be served.

Sub-clause (*2*) runs thus: " On the plaint being admitted, the Court shall by summons in the prescribed form call upon the remaining co-sharer landlords aforesaid to join in the suit as co-plaintiffs for their shares of the rent due to them in respect of the tenure or holding up to the date of the institution of the suit." So, Sir, the proposed amendment only says that action should be taken only if the summons has been served as provided under sub-clause (*2*). I hope Government will accept this proposal.

The Hon'ble Sir PROVASH CHUNDER MITTER: We are prepared to accept this amendment.

The motion of Srijut Nagendra Nath Sen was then put and agreed to.

The following amendment was called but not moved:—

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in clause 95, to proposed section 148A (*9*), line 4, after the word " shall " the following shall be inserted, namely, " unless sufficient cause to the satisfaction of the Court is shown."

Clause 96.

Mr. F. A. SACHSE: On a point of order, Sir. The Government of India have refused sanction to discuss section 153 which clause 96 seeks to amend. Therefore all these amendments, viz., 1200-1210 are ultra vires.

Mr. PRESIDENT: I think they are right, this is really a matter not for this Council.

The following amendments were therefore ruled out of order:—

Khan Bahadur Maulvi AZIZUL HAQUE, Srijut NAGENDRA NATH SEN, Maulvi SHAMSUR-RAHMAN, Babu AMULYA CHANDRA DATTA, Maulvi TAMIZUDDIN KHAN, Babu AKHIL CHANDRA DATTA, Babu AMARENDRA NATH GHOSH and Babu MANMATHA NATH ROY to move that clause 96 (*i*) and (*ii*) be omitted.

Babu MANMATHA NATH ROY and Mr. BIJOY PRASAD SINGH ROY to move that in clause 96, amending section 153, sub-clause (*iii*) be omitted.

Rai HARENDRANATH CHAUDHURI to move that in sub-clause (*iv*) of clause 96, after the word "tenant" and before the word "when," line 4, the following words be inserted:—

"or as to abatement of rent or dispossession by landlord."

Clause 99.

The following amendments were called but not moved:—

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that after clause 99(*a*), the following be added, namely:—

(*aa*) in sub-section (*1*) for the words commencing with "may apply" and ending with "in such area," the following shall be substituted, namely:—

"may, on satisfying such Revenue Officer as the Local Government may appoint, for purpose of this section, to perform the functions of a certificate officer under the Public Demands Recovery Act, 1913, that he maintains his copy of the record-of-rights and other records in the prescribed manner, make a requisition to him for the recovery of any arrears of rent which he alleges are due to him from any tenant."

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in clause 99, for proposed sub-clause (*b*), the following shall be substituted:—

"(*b*) sub-section (*2*) shall be omitted."

Mr. BIJOY PRASAD SINGH ROY to move that in clause 99, amending section 158A, sub-clause (*b*) shall be omitted.

Mr. JOGESH CHANDRA GUPTA to move that in clause 99 for sub-clause (*b*), the following shall be substituted, namely:—

(*b*) in sub-section (*2*)—

"(1) for the words 'may reject any such application or may,' the words 'after considering whether the landlord maintains his copy of the record-of-rights and other records in the prescribed manner shall, if the records are so maintained,' and

(2) for the words 'without, in any of these cases, assigning any reason for its action,' the words 'after assigning reasons to justify such action'

shall be substituted."

Srijut JOGENDRA NATH MOITRA: I move that for Bill, clause 99(*b*), the following shall be substituted, namely:—

(*b*) for sub-section (*2*), the following shall be substituted, namely:—

"(*2*) The Local Government, if on inquiry, finds that the landlord maintains his copy of the record-of-rights and other records in the prescribed manner, it shall allow any such application, subject to such terms and conditions as it may see fit to impose, or vary in terms or conditions so imposed, or withdraw its allowance of the application, but shall, in any of these cases, assign reasons for its action."

My object in bringing this amendment is to remove the arbitrary powers of the Local Government either to accept or reject, without assigning any reasons, the application made by the landlord for the certificate procedure provided by the Bengal Public Demands Recovery Act, 1913, for the recovery of the arrears of rent. This will inevitably result in the acceptance in case of those few who, by their untiring devotion and abject servility, will gain the favour of the Government and rejection in case of those who do not happen to be quite adept in the art of flattery or may abhor the very idea itself. The bulk of the landlords will fall under the second category and will be deprived to this facility.

Sir, I can understand the contention of those who favour the deletion of this clause altogether. But, if the provision remains in the statute, it should be so amended as to enable each and every applicant whose records are kept in proper manner to take equal advantage of it. There is absolutely no justification for the Government to retain this arbitrary power. We should provide against its unrestricted use. The certificate procedure is intended to be applied to those cases where the

record-of-rights have been finished and finally published. The printed and certified copies of this record are, as a matter of course, maintained by all the landlords. The Local Government has therefore very little to consider in this connection. But still, if the Government finds, after proper enquiry, that the records are bad and defective and on that ground refuses the application, it will be perfectly fair to expect the Government to give their reasons in writing for doing so. It will help the landlords to correct defects alluded to and apply to the Government again for the allowance of procedure.

Sir, I ask the House to consider in all seriousness that this is not an extravagant demand on the part of a landlord. The right of distraint has been taken away from them. Their power of realising salamis, has been considerably curtailed. They can, in all fairness, claim this privilege for the speedy realisation of rents fallen in arrears from the tenants. The tenants themselves should have nothing to complain. It is certainly not their intention to avoid regular payment of rents. This procedure will apply in cases of those who are defaulters. The only method adopted now for realising arrears, is by rent suit. But it is a matter of common knowledge that rent suits often prove ruinous to the tenants. So, between the highly expensive and destructive rent suit and the less expensive certificate procedure, I think, every one will prefer the latter. It will save time and money and expedite realisation which will prove beneficial to both the parties. The satisfactory result obtained by the application of this method in Government khas mahals will surely silence the misgivings of those who put a different construction to it.

With these few words, Sir, I commend this amendment for the acceptance of the House.

The following amendment was called but not moved:—

Mr. RANJIT PAL CHOUDHURI to move that for clause 99(*b*), the following be substituted, namely:—

(*b*) for sub-section (*2*), the following be substituted, namely:—

(*2*) The Local Government, after considering whether the landlord maintains his copy of the record-of-rights and other records in the prescribed manner, shall allow the application, subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed or withdraw its allowance of the application in case of persistent default to carry out those terms and conditions."

Mr. JOGESH CHANDRA GUPTA moved the following amendment standing in the name of Rai Harendranath Chaudhuri by leave of the President:—

"That for sub-clause (*b*) of clause 99, the following be substituted:—

(*b*) for sub-section (*2*), the following shall be substituted:—

The Local Government shall allow it, subject to such terms and conditions as may be prescribed by rules made for the purpose of this chapter and approved by the Bengal Legislative Council."

Sir, in moving this amendment I want to delete the words "and approved by the Bengal Legislative Council" at the end by leave of the House. I understand that Government is prepared to consider this amendment and provide for the maintenance of records in all cases employing Government agency, so that landlords may not have to be troubled and so that no question may arise about being satisfied or otherwise with regard to the proper maintenance of records.

Mr. PRESIDENT: It comes to this: you are abandoning the old amendment and moving a new one on short notice.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, our position is this. I have a modified form of the amendment ready and in that form we are prepared to accept it.

Mr. PRESIDENT: Mr. Gupta, do I understand that you want to withdraw your amendment in favour of the amendment to be moved by Sir Provash?

Mr. JOGESH CHANDRA GUPTA: Yes, Sir, that is so.

The motion was then, by leave of the Council, withdrawn.

The Hon'ble Sir PROVASH CHUNDER MITTER: The Certificate procedure can be made applicable if the records are kept properly.....

Mr. PRESIDENT: Order, order, Mr. Bijoy Prasad Singh Roy has yet to move his amendment, as I have placed several amendments in one group to have one discussion on them. Having regard to the fact that Mr. Gupta has withdrawn his amendment, I would ask Sir Provash to first move the amendment by which the one just withdrawn is going to be replaced.

The Hon'ble Sir PROVASH CHUNDER MITTER: I move that for ~~sub-clause (*b*) of~~ clause 99 the following be substituted:—

~~(*b*) for sub-section (*2*), the following shall be substituted:—~~

"(2) The Local Government shall specify the terms and conditions on which such applications may be allowed and shall allow any such

application when such terms and conditions are satisfied. Such terms and conditions may be added to or varied by the Local Government from time to time as may be necessary, and the Local Government may withdraw its allowance of the application if it appears that the terms and conditions are not being complied with."

Mr. A. K. FAZL-UL HUQ: On a point of order, Sir. Does not this part of the House constitute a part of the constitution. We have not been shown a copy of the amendment.

Mr. PRESIDENT: That should not affect you in any way. At this stage, Sir Provash has merely moved his amendment. I would now ask Mr. Bijoy Prasad Singh Roy to move his and after that has been moved all these amendments will be open to discussion, so you will have ample time to consider it.

The following amendment was called but not moved.

Mr. BIJOY PRASAD SINGH ROY to move that to clause 99, amending section 158A, the following shall be added, namely:—

(*bb*) in sub-section (*2*) the words beginning with "without" and ending with "action" shall be omitted and the following proviso shall be inserted after the said sub-section, namely:—

"Provided that in making the order rejecting any such application, reasons for such rejection shall be recorded in writing, and the landlord shall be entitled to a right of appeal against such order to such authority or authorities as the Local Government may prescribe in that behalf."

4-30 p.m.

Mr. PRESIDENT: In fact two amendments are open to discussion at this stage: the one is No. 1217 and the other is that moved by Sir Provash.

The following motion of Srijut Jogendra Nath Moitra was then, by leave of the Council, withdrawan:—

"That for Bill clause 99(*b*), the following shall be substituted, namely:—

'(*2*) The Local Government, if on inquiry, finds that the landlord maintains his copy of the record-of-rights and other records in the prescribed manner, it shall allow any such application, subject to such terms and conditions as it may see fit to impose, or vary in terms or conditions so imposed, or withdraw its allowance of the application, but shall, in any of these cases, assign reasons for its action.'"

The Hon'ble Sir PROVASH CHUNDER MITTER: May I explain the position? It is this: under the present law the right of granting permission for certificate procedure lies with the Government. Now the proposal of Babu Jogendra Nath Moitra, who has just withdrawn his amendment, was that when the landlord keeps his record, the landlord should, as a matter of right, be given the facility of certificate procedure. We object to that because the landlord's record may not be correct, but when the Government maintains the record, and the landlord pays for the keeping of it, we have no objection.

Khan Bahadur Maulvi AZIZUL HAQUE: Unfortunately we have to oppose this amendment too. I think this is another instance of the anxiety on the part of the Government to placate the landlords as much as possible. The question of certificate is fraught with great danger; I think there is a great deal of confusion and very unfortunately in the Revenue Department as to the maintenance of the records required for certificate procedure. It is one thing to maintain the record, and quite another thing to grant certificates. What the maintenance of records guarantees is the question of subsequent transfer or change in the holding and other things. The granting of certificate procedure means that you are allowing the landlord's word to be the final word so far as the realisation of rent is concerned. If the landlord says that rent is due, then Government accepts that. The position is that when a man goes to the court he gets a decree, but the moment the certificate procedure is granted, the decree is taken at the word of the landlord. The granting of certificate procedure means that the landlord has to go to the court and to state that such and such amount of rent is due to him from such and such a person, and the Collector has nothing to do but accept that version. I think the procedure is wrong. I do not see any reason for moving this amendment The other day I made a suggestion in connection with an amendment that a certain thing should be done by the insertion of the word "shall"; the Legal Remembrancer object to it as an extraordinary "shall." May I point out that another extraordinary "shall" has cropped up here? I do not understand why this clause has been added; I do not understand how the local Government "shall" allow such application. This is another instance of an extraordinary "shall." May I point out that another extraordinary of certificate procedure unless there is sufficient guarantee so far as the realisation of rent is concerned that the papers are maintained in such a manner that they cannot be called into question. For these reasons I oppose the amendment.

Khan Bahadur MUHAMMAD ABDUL MUMIN: I am afraid my friend Khan Bahadur Azizul Haque is under a misapprehension, as he generally is when he is not in his usual good temper. In this case he

is against the granting of any certificate powers to the landlord for the realisation of rent. As a matter of fact, this power is already in the present Act, but limited by certain conditions. If he will remember this clause 158A was introduced in 1907 when the settlement proceedings had been concluded in a very large number of districts. This was to give to the landlords some facilities for the realisation of rents in areas where the record-of-rights were in existence. The underlying idea then was that there should be a maintenance of records throughout the province. That of course could not be carried through; therefore this power was only granted to those landlords who agreed that Government, through their own agency, would maintain the records. The landlords thought that the expenditure of maintaining records through Government agency was perhaps too much, and therefore Government did not get a sufficient number of applications for the grant of this privilege. Sir John Kerr's Committee then considered this question, and thought that if this principle was relaxed and landlords were allowed to maintain their own records without the help of Government agency to the satisfaction of the Collector, this privilege could be given to such landlords, and for this purpose this provision has been embodied in the Bill. The question now is whether instead of landlords maintaining their own records through their own agency, Government should maintain the records at their expense as before. What the mover of the amendment wants is that if records are maintained through their own agency to the satisfaction of the Government, and also if the conditions and terms specified by the rules are followed, in that case Government shall in every case grant the application of such landlords. I do not see that much harm would be done if the conditions are satisfied and the Government has power to frame the conditions and terms under the rules. There is perhaps no harm in accepting the suggestion embodied in the amendment, that Government should not refuse where the conditions and terms are fulfilled. As a matter of fact there is no reason to refuse such applications because it is the opinion of Government that facilities should be given to the landlords for the realisation of their rents. The House must have noticed that all the amendments that have been discussed this afternoon, at least most of them, relate to facilities given for the speedy realisation of rent. This certificate procedure is only another instance. I do not see why the tenants' party should object to this provision. Everybody knows that summary powers lead to hardship, but if there are proper sateguards, I do not see why they should object to or oppose it. When after the receipt of an application Government are satisfied that the landlord keeps his accounts in proper order and that the landlord deals with his tenants honestly, I do not see why the landlord should not be given facilities for the realisation of his rents. I hope the Khan Bahadur will after this see his way to withdraw his objection.

Khan Bahadur Maulvi AZIZUL HAQUE: May I know why Government wants that it shall allow such application?

Khan Bahadur MUHAMMAD ABDUL MUMIN: Because the permission can be hedged round by condition for which Government have full power in the Rules.

The Hon'ble Sir PROVASH CHUNDER MITTER: I may say as an additional reason that unjustified criticism is often made that for political reasons this permission is withheld. Government does not withhold the facility of certificate procedure for political reasons but Government must insist on correctness of records and accounts as also other relevant matters relating to records and accounts. Now under our proposal the records will be maintained by Government. I want to make the position of Government quite clear on this point that whose records are maintained by Government—we are quite willing to accept the word "shall." The acceptance of this amendment should remove any unjustified misapprehension from the mind of the public.

4-45 p.m.

The motion of the Hon'ble Sir Provash Chunder Mitter was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Ramaprasad Chandra.
Banerjee, Babu Promotha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraborty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Nafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Cosh, Mr. A. J.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Forrester, Mr. J. Campbell.
Ganguly, Babu Khagendra Nath.
Hasa, Babu Amarendra Nath.
Hosse, Mr. M. C.
Hosh Maulik, Mr. Satyendra Chandra.
Huzmavi, Alhadj Sir Abdelkerim.
Gilchrist, Mr. R. N.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hossain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
Hussain, Maulvi Latafat.
James, Mr. P. E.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukerjea, Srijut Tarakanath.
Mumin, Khan Bahadur Muhammad Abdul.
Masker, Babu Hem Chandra.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Ray Chaudhuri, Mr. K. C.
Reid, Mr. R. N.
Ray, Dr. Sidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Ray Mr. D. N.
Ray, Mr. Kiran Sankar.

Saehse, Mr. F. A.
Sanyal, Babu Sashindra Narayan.
Sarker, Babu Naliniranjan.
Sarker, Rai Sahib Rebati Mohan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Shah, Mr. Gholam Hossain.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Wordsworth, Mr. W. C.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Maulvi Syed Nausher.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Mr. A. K. Fazl-ul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sattar, Mr. Abdool Razak Hajee Abdool.
Solaiman, Maulvi Muhammad.

The Ayes being 69 and the Noes 18, the motion was carried.

[At 4-50 p.m., the Council was adjourned and it re-assembled at 5 p.m.]

The following amendments were called but not moved:—

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that after clause 99, proposed sub-clause (*b*), the following shall added, namely:—

"(*c*) sub-section (*3*) shall be omitted."

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that after clause 99, proposed sub-clause (*c*), the following shall be added:—

"(*d*) sub-sections (*4*), (*5*), (*6*), (*7*), (*8*), and (*9*) shall be renumbered as (*2*), (*3*), (*4*), (*5*), (*6*) and (*7*), respectively."

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in clause 100, in proposed section 158A, lines 5 and 6, for the words and figures "sub-sections (*1*), (*2*) and (*3*)." the word and and figure "sub-section (*1*)" be substituted.

Babu KHAGENDRA NATH GANGULY: In the absence of Babu Manmatha Nath Roy I beg to move the following amendment standing in his name at short notice, namely:—

"That in clause 100, proposed section 158AAA, lines 1 and 2, after the words 'in execution' the words 'of a decree for arrears of rent or' be inserted."

Rai MAHENDRA NATH GUPTA Bahadur: I oppose this amendment. In the first place section 158AAA is a section under Chapter XIIIA which deals with certificate procedure. There is no question of decree for arrears of rent other than of certificate. Therefore the question of inserting the words "of a decree for arrears of rent or" does not arise. I may, however, explain at the same time that it is a mistake to think that we have been wrong in deleting the first portion of section 158B and by way of that the whole of section 158B. When this section 158B was inserted in 1907 in the Act the question arose only with reference to decrees obtained by co-sharer landlords; it was really by mistake that the first portion which was in a previous draft got into the Act; it was unnecessary so far as regards the sole or entire body of landlords were concerned. Section 159 is complete in that respect and worked quite satisfactorily before the amendment of 1907. It clearly explains what happens when there is a decree and a sale follow that decree and what a purchaser would get. As regards the portion relating to co-sharer landlords we have now made provision in section 148A(6) of our Bill in which it is clearly stated that "a decree passed by the Court for the rent claimed in a suit brought in accordance with the foregoing provisions of this section shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers." Therefore no separate mention of anything in case of a decree obtained by a co-sharer landlord arises.

As regards the last portion of 158B it has been given a place—its proper place—in section 22. To conclude—in the first place it is quite out of place to have the words inserted in section 158AAA, which is a section under Chapter XIIIA, and in the second place it is quite unnecessary, for if the words be retained they will be useless and will merely complicate matters. We have been advised that the first portion of 158B should be deleted. I oppose the amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I will just point out one point with regard to the amendment now under discussion. Section 158B is now deleted and when we refer to the Statement of Objects and Reasons and also to the statement under clause 100 it is stated there "the insertion of section 158AAA is consequential to the repeal of section 158B (vide clause 101), its provisions so far as regards rent suits being covered by or spread into other sections." The point I want to emphasise is this: under section 158B, which has been repealed now, we have had these words: "where a tenure or holding is sold in execution of a decree for arrears of rent due in respect thereof, or a decree for damages under section 186A or a certificate for arrears of rent signed under the Public Demands Recovery Act, 1913, the tenure or holding shall, subject to the provisions of section 22, pass to the purchaser. If such decree was obtained by the sole landlord or the

entire body of landlords, etc." The words "that the entire holdi or tenure shall pass to the purchaser in execution of a decree for arre of rent" are now taken off and they do not find a place anywhere. section 159 what do we find? We find that "where a tenure or holdi is sold in execution of a decree for arrears due in respect thereof t purchaser shall take, subject to the interest defined in this chapter protected interest." It is now a well established principle of law th when a tenure or holding is sold in execution of a decree obtained l the entire body of landlords the entire holding passes to the purchas That being so, the point was made perfectly clear by the wording section 158B. But difficulties have now arisen in consequence of tl fact that these words are not now in the Bill.

Section 158AAA provides for the passing of a tenure or holdir sold in execution of a certificate for arrears of rent. Now as objecti is felt that this chapter—Chapter 13—being a chapter which deals wit the recovery of rents under the Public Demands Recovery Act of 191 I might suggest to the Hon'ble Member in charge of the Bill to see h way to the incorporation of these words in section 159—the words th have now been taken off, viz., that where the tenure or holding h been sold in execution of a decree for arrears of rent, the entire tenu or holding shall pass to the purchaser. That will meet the situatio quite well. I therefore respectfully ask the Hon'ble Member to acce the amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: Both Bab Jogindra Chandra Chakravarti and Rai Mahendra Nath Gupta Bahadu are agreed on one point, namely, that section 158AAA is not the prope place for this amendment. As regards the suggestion of Babu Jogindr Chandra Chakravarti unless I see it in draft it is very difficult for m to make up my mind As I apprehend that there may be difficultie I am not prepared to accept that suggestion at this stage.

Mr. F. A. SACHSE: Section 148 (6) runs thus: "A decree passe by the court for the rent claimed in a suit brought in accordance witl the foregoing provisions of this section, that is to say in a suit brough by a co-sharer or some of the co-sharers shall, as regards the remedie for enforcing the same, be as effectual as a decree obtained by a sol landlord or an entire body of landlords in a suit brought for rent du to all the co-sharers."

5-15 p.m.

Now, section 158B, which the mover wants to restore to the Act, was only put in in 1907. Does he think that under the law as it stood before that date a sole landlord was unble to sell up a holding and to annul encumbrances? If the law was not defective before 1907, it is

not defective now. The law before 1907 gave the sole landlord that right, and now section 148A (6) gives to the co-sharer landlords that right. So, section 158B, which was purely devised in the interests of separate co-sharers, is no longer necessary, and the Act, as it was before 1907, will stand.

The motion of Babu Khagendra Nath Ganguly was then put and a division taken with the following result:—

AYES.

Bagshi, Babu Romes Chandra.
Banerjee, Babu Promotha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Bose, Babu Bejoy Krishna.
Chakravarti, Babu Jogindra Chandra.
Chatterjee, Srijut Bijay Kumar.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Himatsingka, Babu Prabhu Dayal.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Maitra, Srijut Jogendra Nath.
Mukerjea, Srijut Taraknath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Abbott, Mr. E. D.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Ali, Mr. Altaf.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranandra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Forrester, Mr. J. Campbell.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Gilchrist, Mr. R. N.
Goenka, Rai Bahadur Badridas.
Gupta, Rai Bahadur Mahendra Nath.
Hoque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
James, Mr. F. E.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Martin, Mr. O. S.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Parrett, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-.
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Raikat, Mr. Prasanna Deb.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Reid, Mr. R. N.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Rai Sahib Rebati Mohan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 33 and the Noes 51, the motion was lost.

The following amendment was called but not moved:—

Babu MANMATHA NATH ROY to move that in clause 102, proposed section 159 (*2*), line 6, the words "of confirmation" be omitted.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 1229, 1230 and 1231.

The following amendment was called but not moved:—

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that clause 103 shall be omitted.

Babu JOGINDRA CHANDRA CHAKRAVARTI: Sir, I beg to move that in clause 103 for the proposed clause (*ff*) and the "*Explanation*" thereunder, the following shall be substituted, namely:—

"(*ff*) the right of a raiyat at fixed rates to hold at a fixed rent or rate of rent and"

It would appear on looking at the section, which has been framed, and this clause (*ff*) that the right of a raiyat at fixed rates is now proposed to be included within the list of protected interests, but with certain modifications. The clause runs as follows:—

"The right of a raiyat at fixed rates to hold at the fixed rent or rate of rent when he has been holding at such fixed rent or rate of rent from the time of the Permanent Settlement."

Then, there is the following explanation:—

"A raiyat at fixed rates, whose rent or rate of rent is fixed under the terms of a lease granted subsequent to the Permanent Settlement, shall not have the right to hold at the rent or rate of rent so fixed, but shall be liable to pay rent at the rate paid for land of a similar description and with similar advantage in the same village, or at such other rate as may be deemed to be fair and equitable by the Court."

Sir, by my amendment I propose to delete all the words in this clause except the words "the right of a raiyat at fixed rates to hold at a fixed rent or rate of rent," that is to say, I want to do away with the distinction which is now sought to be made between a raiyat at a fixed rate of rent, who has been holding the land from the time of the Permanent Settlement, and a similar raiyat who has obtained his right to hold the land at a fixed rate of rent after the Permanent Settlement by a registered kabuliyat or by some other means. I raise here not simply a question of procedure but a question of principle. If a raiyat at a fixed rent or rate of rent has obtained his right after the Permanent Settlement by a registered kabuliyat, it does not stand to reason at all that his right to hold at that rate of rent should not subsist even after

the superior tenure is sold in execution of a rent-decree. There is absolutely no reason for making this distinction, and so far as the law stands at present—I mean case law—it is that a raiyat of similar description, i.e., a raiyat holding land at a fixed rent or rate of rent, even when his tenure began after the passing of the Bengal Tenancy Act, 1885, is entitled to hold his land at a fixed rent or rate of rent, whatever the case may be, even after the superior tenure is sold in execution of a decree for arrears of rent. I might refer only to one case, viz., 26, *Calcutta Weekly Notes*—a decision of Mr. Chief Justice Sanderson and Mr. Justice Richardson—in which it has been held that raiyat at fixed rates, whose tenancy began after the Bengal Tenancy Act came into force, could become a settled raiyat, and therefore acquire a right of occupancy. His interest was a protected interest. This was followed by another case reported in 54 Calcutta, page 681.

The Hon'ble Sir PROVASH CHUNDER MITTER: What is the name of the first case?

Babu JOGINDRA CHANDRA CHAKRAVARTI: It is Sarbeswar Patra versus The Maharajadhiraja Bahadur of Burdwan.

Now, Sir, it might be said that one of the points raised in that case was that a raiyat, with regard to whose incidents of tenancy this question arose, was also a raiyat who could be held to be a settled raiyat of the village, and that, therefore, he had acquired an occupancy right. So, under section 160 (*d*), his right of occupancy was protected, and that was one of the reasons which induced the learned Judges to hold that the interest of that particular raiyat in that particular case was also protected. I respectfully submit, Sir, that that was not the only ground for that decision. On the contrary, it was held that a raiyat, who had acquired a right to hold at a fixed rate of rent, even after the passing of the Bengal Tenancy Act—that is long after the Permanent Settlement—did not lose his right to hold at that rate, merely because he was not holding his land from the time of the Permanent Settlement. From the point of view of equity and justice, I would respectfully ask the members of this House to consider as to whether it would be fair to allow a proposition of that kind to go in and form a part of a piece of legislation like the Bengal Tenancy Act.

Now, Sir, a man might have purchased a right by paying a large amount of salami, and we know perfectly well that no man is allowed the right to hold at fixed rent unless he pays a good salami to his immediate landlord. And if he purchases this right by paying a heavy salami, and then for some reason the superior tenure be sold in execution of a decree for arrears of rent, it only stands to reason that his right to hold at that rate which he purchased by paying a heavy sum should continue, and from that point of view I submit that this is an amendment which ought to be accepted, because if the provision, as it stands

in the Bill, be allowed to form part of the Act, it will only result in that even although a man might have purchased his right to hold at a certain rate by paying a very heavy salami, as soon as the right of the superior landlord is sold in execution of a decree for arrears of rent, he will find himself in the position of an ordinary raiyat whose rent is liable to be enhanced under the provisions of the Bengal Tenancy Act, and then he will have to pay a fair and equitable rent which may be settled by the Court. I submit, therefore, that the amendment should be accepted by the House. With these words, I commend it for the acceptance of the House.

5-30 p.m.

The following amendments were called but not moved:—

Babu ROMES CHANDRA BACCHI to move that in clause 103, in proposed clause (*ff*)—

(*i*) in lines 2 to 4, for the words "when he has been holding at such fixed rent or rate of rent from the time of permanent settlement," the words "when he is a settled raiyat of the village" shall be substituted; and

(*ii*) the "Explanation" shall be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE to move that in clause 103, in proposed clause (*ff*) lines 2-4, the words "when he has been holding at such fixed rent or rate of rent from the time of the permanent settlement" be omitted.

Babu JITENDRALAL BANNERJEE to move that in clause 103 the "Explanation" given after clause (*ff*) of section 160 of the Act be omitted.

Rai MAHENDRA NATH GUPTA BAHADUR: Sir, I am surprised to find that such a learned member of this House as Babu Jogindra Chandra Chakravarti has moved an amendment of this nature and talked at the same time of equity and justice. It does not require any very great imagination to distinguish between a raiyat or tenant who has been holding from the time of the Permanent Settlement at an unaltered rent and a tenant who has been created by a tenure-holder for the time being at a rent fixed in perpetuity. That rent may be a mere nominal rent fixed on receipt of a high salami. The distinction is very clear. As regards the first class of tenants, it is a well recognised principle that the rents of such tenants cannot be increased and that is repeated in section 50 of this Act. This section runs thus:

"Where a tenure-holder, or raiyat, and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased."

That is the doctrine which has simply been repeated in section 160, clause (*ff*). This is also what we have in section 37 of the Revenue Sale Law, Act XI, of 1859. It says that a tenant whose rent has not been altered from the time of the Permanent Settlement, the rent of such a tenant is absolutely protected and it cannot be altered even by the purchaser at a revenue sale. But the case of other mokarari tenants, whom for convenience sake I may call patta mokararis, who take mokarari leases sometimes at nominal rent, having paid a large salami to the landlord for the time being, is different. No doubt so long as the person from whom he has taken the mokarari lease continues, or his successor in interest continues, he also continues to retain his title to hold at the fixed rent; but supposing the landlord—a tenure-holder—lets out his land to a raiyat or to an under tenure-holder (though this question does not arise) on a nominal rent, having received a large salami, and then himself falls into arrears of rent. The superior landlord purchases it at the rent sale, and what does he find?—he finds that everything of value is gone, the holding which fetched ten rupees has been let out on two annas and this is to be binding on him for ever! Babu Jogindra Chandra Chakravarti's proposal is that it is consistent with justice and equity that the superior landlord should be bound for ever by this two annas only. This would be putting a premium on, what I may say, fraud, and it has been nowhere contemplated that in such cases the rent should be protected; and this is what has been made clear by the explanation to section 160, clause (*ff*). The main section says that where the tenancy has been in existence from the time of the Permanent Settlement, the rent cannot be altered even when the superior tenure had been sold away for arrears of rent; but when the raiyati holding was the creation of his landlord for the time being and it was for that landlord's default that the tenure came to be sold for arrears of rent, it is fair and just that the rent of that raiyat should not be recognised as a protected interest against the superior landlord. The provisions are quite clear and they should stand as in the Bill. I oppose the amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, the authorities upon which Babu Jogindra Chandra Chakravarti relies do not support him: they rather go against his contention. Hon'ble members will notice that section 160 (*d*) contains the expression "any right of occupancy." Now, any one having a right of occupancy can claim protection, the reason being to give protection to agriculturists. What Chief Justice Sanderson and Mr. Justice Richardson held in the case

of Sarbeswar *vs.* Bejoy, 49 Calcutta page 280, was that a raiyat holding at a fixed rate does not cease to be an occupancy raiyat and so he is entitled to protection. This case was followed in the case of Midnapore Zamindari Company *vs.* Sadhumani, 54 Calcutta, page 681, in which the line of reasoning was the same. We have kept the provision about protection of occupancy raiyats in clause (*d*) of section 160, and furthermore in an amendment to section 18 (*2*) we have made it clear that a raiyat at fixed rates does not cease to have the privileges of an occupancy raiyat. This disposes of the rulings quoted by Jogindra Babu. Now, Sir, the effect of the proposal in our amendment is this: that no one holding at fixed rates from before the Permanent Settlement can be ejected. He is protected, because it is a settled principle of the Bengal Tenancy Act that whoever has acquired an occupancy right or certain definite rights, before the Permanent Settlement should be protected in-as-much as no landlord could have acquired any right before the Permanent Settlement. If however a raiyat has paid rent for 20 years at an uniform rate then a presumption is raised in his favour under section 50 and it is presumed that he has been holding the tenancy from the time of the Permanent Settlement. By virtue of such presumption he should be protected unless the landlord succeeds in displacing the presumption. The position should be quite different in the case of a lease created by the out-going landlord. If such landlord receives Rs. 10,000 and reduces the rent by Rs. 1,000 and after that deliberately defaults and the superior landlord purchases the property in execution of a rent decree should the latter be bound by the action of the former? Does Babu Jogindra Chandra Chakravarti seriously contend that this kind of fraud should be encouraged? Is there any principle of justice, equity and good conscience to encourage a fraud of this kind? I cannot find any justification for this except that possibly Babu Jogindra Chandra Chakravarti, who is an eminent lawyer, inadvertently put this amendment in and then wants to stand by it. When a superior landlord purchases a property in a rent sale, it is just and fair that he should get it back in the same state in which he handed it over to his tenant and if that tenant takes an undue advantage of his position as against the interests of his landlord then that tenancy should cease to exist and the landlord should get back the land.

Maulvi TAMIZUDDIN KHAN: Sir, I want to say a word or two in support of this amendment. It has been said that the landlord will be in a difficult position if the amendment is carried, but I would like to ask Government whether it has considered the case of those raiyats at fixed rates who have taken settlement of their lands after the Permanent Settlement by paying a heavy salami They have perhaps spent a good lot in creating this mokarari right. Now, if this amendment is lost and the Government proposal accepted, then this class of people will be altogether, helpless. All the money spent will be thrown away.

Government no doubt is anxious for the landlords, but if it is also anxious for the raiyats, I do not think Government should oppose this amendment.

The motion of Babu Jogindra Chandra Chakravarti was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Bagchi, Babu Ramos Chandra.
Banerjee, Babu Premotha Nath.
Basu, Babu Saai Sekhar.
Basu, Mr. P. C.
Bose, Babu Bejoy Krishna.
Chakravarti, Babu Jogindra Chandra.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Maulvi Nurul Huq.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Haque, Khan Bahadur Maulvi Azizul.
Himatsingka, Babu Prabhu Dayal.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukarjee, Srijut Taraknath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Shamsur-
Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Dr. Bidhan Chandra.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Sarker, Babu Naliniranjan.
Sarker, Rai Sahib Rebati Mohan.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranandra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
James, Mr. F. E.
Lala, Babu Saroda Kripa.
Martin, Mr. O. S.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Parratt, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Reid, Mr. R. N.
Roy, Mr. Bijay Prasad Singh.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sen, Mr. Satish Chandra.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 43 and the Noes 41 the following motion was carried:—

"That in clause 103 for the proposed clause (*ff*) and the "Explanation" thereunder, the following shall be substituted, namely:—

"(*ff*) the right of a raiyat at fixed rates to hold at a fixed rent or rate of rent and"

5-45 p.m.

The following amendments were called but not moved:—

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 104 (*a*), in the proposed sub-section (*1*), lines 8 and 9, for the words "combined order of attachment and proclamation," the word "proclamation" be substituted.

Kazi EMDADUL HOQUE to move that in clause 104 (*a*), at the end of the proposed sub-section (*1*) of section 163 of the Act, the words "without any notice as required under Order 21, Rule 66 (*2*)" be added.

Maulvi NURUL HUQ CHAUDHURI to move that after clause 104 (*a*), the following shall be inserted, namely:—

(*aa*) in sub-section (*2*) (*a*), the words "holding at fixed rates" shall be omitted, and in line 4, for the words "the registered and notified," the word "all" shall be substituted.

Maulvi NURUL HUQ CHAUDHURI: Sir, the next amendment is dependent upon the previous amendment No. 1237. So I ask permission to move the previous one also.

Mr. PRESIDENT: It was called but not moved. I am sorry I cannot allow you to go back.

The following amendments were called but not moved:—

Maulvi NURUL HUQ CHAUDHURI to move that after clause 104 (*b*), the following shall be inserted, namely:—

"(*bb*) sub-section 2 (*b*) shall be omitted."

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur and Maulvi NURUL HUQ CHAUDHURI to move that in clause 104 (*b*), lines 4 to 6, the words "and after the words 'occupancy-holdings,' and the words 'not held at fixed rates' shall be inserted," shall be omitted.

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 104 (*c*), after clause (*a*) of proposed sub-section (*3*), the following "Explanation" be inserted, namely:—

"*Explanation.*—If more than one tenure or holding ordered to be sold is situated in the same mauza, it will be sufficient if a copy of the sale proclamation is fixed up in a conspicuous place on any land comprised in any of the tenures or holdings advertised for sale."

Maulvi NURUL HUQ CHAUDHURI: May I just point out that there is a mistake in my next amendment as printed. It should be "164" and not "165" as printed, as my motion refers to section 164.

Mr. W. H. NELSON: On a point of order, Sir. May I point out that whether it relates to section 164 or 165, it is out of order, because neither of these sections is materially touched by the Bill.

Mr. PRESIDENT: I think you are right. It must have escaped our vigilance. It is out of order as touching principles not thrown open by the Bill.

The following amendments were called but not moved:—

Maulvi NURUL HUQ CHAUDHURI to move that after clause 104, the following be inserted, namely:—

104A. In section 165 of the said Act, the words "at fixed rates," after the words "a holding," in the first place where they occur, shall be omitted.

Maulvi NURUL HUQ CHAUDHURI to move that after clause 105 the following shall be substituted, namely:—

"105. Section 166 of the said Act is repealed."

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 107 (*b*), after the words "the costs of the application under this section and," the words "any rent with interest and" be added.

Rai HARENDRANATH CHAUDHURI to move that in clause 127, after clause (*d*), the following be added:—

(*e*) to section 169 of the said Act, the following shall be added, namely:—

"*Explanation.*—In this section the word 'rent' includes interest or damage."

Maulvi ABUL KASEM to move that for clause 108 the following shall be substituted, namely:—

"108. Sub-section (*4*) of section 170 of the said Act, as modified by section 54 of the Eastern Bengal and Assam Tenancy (Amendment) Act, 1908, shall be omitted, and section 170 as so amended shall be substituted for section 170 of the said Act as modified by section 54 of the Bengal Tenancy (Amendment) Act, 1907."

Kazi EMDADUL HOQUE to move that at the end of clause 108 (*1*), the following be added, namely:—

"from sub-section (*2*) of section 170 as so substituted the words 'on the ground that the decree has been satisfied out of Court' be omitted."

Srijut NAGENDRA NATH SEN: I move that in clause 110 in proposed section 172, lines 11 and 12, the words "whose interest would be voidable upon the sale" be omitted.

My object in moving this amendment is to prevent the decision of intricate questions of law respecting titles to property summarily judged in execution proceedings. My object is to allow all sorts of inferior tenants to have the power of depositing money in order to prevent the sale of the estate. I referred to sub-section (*2*) of section 170 and section 171 of the Bengal Tenancy Act when disposing of the question as to who is the person who is entitled to deposit the money. Sub-section (*2*) of 170 runs thus: "When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court." Section 171 is also to the same effect. With reference to this there has cropped up a number of rulings which are as preplexing and as irritating as can be. We are giving power to the tenants to prevent the sale of the estate. It is immaterial whether the person is going to pay money out of his own pocket or not. That is a question which should not be discussed at that stage of the case. It does not matter who pays when the sale is going to be held. It is not in the interest of judgment-debtor or tenant or the Court to see whether the person paying money with any interest or not. It has been held in cases under sections 170, 171 and 172 that a person whose interest is void cannot pay money.

In this connection I would refer to the Statement of Objects and Reasons as given in the Bill. I will read out clause 110. "The present law does not permit the benefit of section 172 in cases in which an inferior tenant pays money into Court under section 174 to set aside a sale. It is reasonable that he should have the same benefit and the Select Committee's amendment has accordingly been adopted." Here there is nothing to indicate that a person whose interest has voided upon sale has to pay any money. It is reasonable that he should have the same benefit and the Select Committee's amendment should be adopted. May I respectfully submit to the members of the House that

my amendment is in entire consonance with the spirit and the Statement of Objects and Reasons as given under clause 110. The proposed deletion of the words would not take away any interests from anybody while at the same time it will prevent a summary decision on the question of time and it will not be attacked by estoppel. Therefore I respectfully submit to the members that my amendment be accepted.

The following amendment was called but not moved:—

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 110, in the proposed section 172, lines 11 and 12, for the words "would be voidable upon," the words "is affected by" be substituted.

Babu PRANENDRA NARAYAN CHAUDHURI: The reason given by the mover of the amendment, is that he wants to provide, that any person whose interests are affected by the sale may be able to pay the total amount either before or after the sale. This is already provided for. He can pay up before the sale under section 170 and after the sale under section 174 (*1*), so that really he is not affected. What is provided here is that an inferior tenant whose interest is voidable upon sale, if he pays the money into the Court, will be able to deduct that money from the rent due by him. So that there is no point in the amendment now under discussion.

The motion of Srijut Nagendra Nath Sen was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Prometha Nath.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Bose, Babu Bejoy Krishna.
Chakravarti, Babu Jogindra Chandra.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Nazar Rahman.
Chaudhuri, Maulvi Nurul Huq.
Datta, Babu Amulya Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Kasem, Maulvi Abul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukherjea, Srijut Taraknath
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Shamsur-.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy Mr. D. N.
Roy, Mr. Kiran Sankar.
Sarker, Babu Naliniranjan.
Sarker, Rai Sahib Rebati Mohan.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.

NOES.

Abbott, Mr. E. G.
Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.

Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Dash, Mr. A. J.
Forrester, Mr. J. Campbell.
Fyfe, Mr. J. H.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Chuznavi, Alhadj Sir Abdelkerim.
Gilchrist, Mr. R. N.
Guha, Mr. P. N.
Gupta, Rai Bahadur Mahendra Nath.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
James, Mr. P. E.
Luke, Mr. N. R.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Momin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Reid, Mr. R. N.
Roy, Mr. Bijoy Prasad Singh.
Sachse, Mr. F. A.
Sanyal, Babu Sachindra Narayan.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 41 and the Noes 36 the motion was carried.

The following amendments were called but not moved:—

Maulvi ABUL KASEM to move that clause 111 be omitted.

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR-RAHMAN to move that in clause 111, in proposed section 174 (*1*), line 6, after the words "but in such cases," the words and figures "the Court shall within 15 days of the date of sale inform the judgment-debtor by registered post-card that the defaulting tenure or holding has been sold, and" be inserted.

Babu NAGENDRA NARAYAN RAY: I beg to move that in clause 111, in sub-section (*1*) of the proposed section 174, lines 8-9, for the words "at any time within thirty days from the date of the sale," the words "one year from the date of taking actual possession by the auction-purchaser" be substituted.

The object of my amendment is obvious and I think I need not say anything in support of it.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 111, in section 174 (*1*), in line 9, for the word "thirty" the word "sixty" be substituted.

I think this is a harmless proposal. The provision in the Bill is that the judgment-debtor can deposit the decretal amount within a month and set aside the sale but it very often happens that the judgment-debtor does not know anything whatsoever about the sale and the holding goes out of his hand without his knowledge. Without making a long speech I propose that the period given to the judgment-debtor to pay off the money, should be increased to two months. If the period be increased to two months nobody will lose anything and the judgment-debtor will get an extension within which he can more easily deposit

the money. I, therefore, hope that this amendment will be accepted by the House.

Babu PRANENDRA NARAYAN CHOUDHURI: I oppose the amendments. In the Bill the time provided is six months from the date of sale under sub-section (*3*) but in the present law the period is only thirty days. Six months ought to be more than sufficient and I do not think more time should be allowed. [A VOICE: The period is only 30 days under section 174 (*1*)]. The present law as laid down in order 21, rule 89, Civil Procedure Code, provides that the deposit should be made within 30 days and this period ought to be sufficient. In the corresponding provision in 174 (*1*) the same period has been provided.

The mover of amendment No. 1253 has proposed that the period should be one year from the date of taking actual possession by the auction-purchaser. That period is far too long. In the meantime the auction-purchaser has to settle the land with some other tenant otherwise the land will remain unoccupied. I, therefore, oppose the amendments.

Khan Bahadur Maulvi EKRAMUL HUQ: I beg to support the amendment moved by my friend Maulvi Tamizuddin Khan. I had tabled a similar amendment for discussion also. The only thing that I should point out is this: the holding of a tenant is sold only when he is not in a position to pay his dues and in these circumstances he will certainly need more time to find the money and get the sale cancelled It is not possible to get the money within 30 days and it is but fair that the tenant should be given some more time, some breathing time as it were, and that is why I have proposed 60 days. So I trust Government will not grudge this small boon to the tenants and enable them to get back their own land.

The motion of Babu Nagendra Narayan Ray was then put and lost.

The motion of Maulvi Tamizuddin Khan was then put and lost.

6-15 p.m.

Mr. PRESIDENT: I propose to have one discussion on amendments Nos. 1256 (first part) to 1261.

Maulvi TAMIZUDDIN KHAN: I beg to move only the first part of the amendment which runs as follows:—

"That in clause 111, in sub-section (*3*) of the proposed section 174 in line 5, for the words 'six months,' the words 'one year' be substituted."

Sir, under the present law, an application for setting aside a sale can be made within one month only. Now, I recognise that the provision in the Bill extending that period to six months is no doubt somewhat generous, but I would ask the House to consider whether the period is sufficient. I do not want to make a long speech. Everyone knows that very often processes are suppressed and sales are held without the knowledge of the judgment-debtors. Cases of that kind are now-a-days very frequent and we can easily see what hardship it is for the poor judgment-debtor, whose holding is lost to him without his knowledge. Now, if the statutory period be once elapsed, the judgment-debtor has practically no remedy. If he comes forward with an application after that period, he has to prove fraud, and unless he can do so his application has no chance of being granted. Therefore, if the statutory period once elapses he loses his holding for good. As I have already said, cases of suppression of sale processes and summons are legion. So, if the period is extended to one year from six months, it will give a little more privilege to judgment-debtors, and I think the landlords and the Government will not grudge that.

The following amendments were called but not moved:—

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur and Mr. BIJOY PRASAD SINGH ROY to move that in clause 111, in the proposed section 174 (*3*), line 5, for the words "six months," the words "three months" be substituted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, and Mr. PROSANNA DEB RAIKAT to move that in clause 111, in the proposed section 174 (*3*), line 5, for the words "within six months," the words "within two months," shall be substituted.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur: I move that in clause 111, in proposed section 174 (*3*), line 5, for the words "six months," the words "one month" shall be substituted.

Sir, the object of my amendment is to limit the time from six months to one month. At present, the law provides only one month, and there seems no justification for extending it to six months. With these few words, Sir, I beg to move this amendment.

Babu PRANENDRA NARAYAN CHAUDHURI: Sir, I oppose both the amendments.

The mover of amendment No. 1256 (*a*) has proposed to substitute one year for six months. As I have already submitted, the period is far too long. The period was only thirty days, and it has been extended to six months now.

The mover of amendment No. 1261 has proposed to substitute one month for six months. Six months have been put in here after mature consideration. All the committees which considered this matter recommended that the period should be six months. The period, therefore, was extended to six months. I hope the House will accept the provision in the Bill.

The motion of Maulvi Tamizuddin Khan was then put and lost.

The motion of Raja Bhupendra Narayan Sinha Bahadur, of Nashipur, was then put and lost.

Maulvi TAMIZUDDIN KHAN: Sir, I beg to move that in clause 111, in sub-section (*3*) of the proposed section 174, in lines 5 and 6, after the words "the date of the sale," the words "or the date of his knowledge of the sale" be inserted.

Sir, I have not asked for much in this amendment. As I have already said, sales are often held without the knowledge of the judgment-debtors. If the judgment-debtor loses his remedy for all time to come once the period of six months from the date of sale has elapsed, then it will cause great hardship to him. Now, if the provision made in the Bill is altered in the manner suggested by me, i.e., by the substitution of the words "or the date of his knowledge of the sale" for the words "the date of the sale," then he will not be prejudiced in this manner.

I think, therefore, the amendment will be acceptable to the House.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I am going to suggest something, which I hope will meet the mover's object. The wording in the Bill is "the date of the sale," and my friend wants to replace this by the words "or the date of his knowledge of the sale." Well, the mover of the amendment will no doubt appreciate that the relevancy of the date of knowledge of the sale comes in when there is fraud or suppression of the summons or of sale proclamation. If it is a mere irregularity, then there is no relevancy in the words "or the date of his knowledge of the sale." The House will observe that there is another amendment, I mean No. 1262, where the proposer wants to put in the word "fraud," and I shall be prepared to accept that amendment. If that amendment is accepted by the House, then this amendment will become unnecessary.

With these words, Sir, I oppose this motion.

The motion of Maulvi Tamizuddin Khan was then put and lost.

Babu ROMES CHANDRA BAGCHI: Sir, I beg to move formally that in clause 111, in proposed section 174 (*3*), line 7, after the words "material irregularity," the words "or fraud" be inserted.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I accept the amendment.

The motion was then put and agreed to.

The following amendment was called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that in clause 111, in sub-section (*3*) of the proposed section 174, the following shall be added after the words "conducting the sale," namely:—

"upon depositing half of the decretal amount in Court."

Babu ROMES CHANDRA BACCHI: Sir, I beg to move that in clause 111, in proposed section 174 (*3*), proviso (*a*), in lines 4 and 5, after the words "such irregularity," the words "or fraud" be inserted. It is merely a consequential amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I accept the amendment.

The motion was then put and agreed to.

The following amendments were called but not moved:—

Kazi EMDADUL HOQUE and Babu AKHIL CHANDRA DATTA to move that in clause 111, sub-section (*3*) (*b*) of the proposed section 174 be omitted.

Babu AMULYA CHANDRA DATTA to move that in clause 111, in the proposed proviso (*b*) to section 174 (*3*)—

(*i*) in line 5, the word "either" be omitted, and in lines 8 and 9 after the words "no such deposit" the words "or security" be inserted.

(*ii*) in line 6, after the words "in execution of the decree" the words "or furnishes sufficient security for the realisation of the decretal money" be inserted.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur, to move that in clause 111, in proposed section 174 (*3*), proviso (*b*), line 5, for the words "the amount" the words "half the amount" shall be substituted.

Rai HARENDRANATH CHAUDHURI to move that in clause 111, in the proposed new section 174 after sub-section (*4*) the following be added:—

"(*4a*) No appeal shall lie against an order refusing to set aside a sale made on the application of the judgment-debtor under sub-section (*3*)."

Babu JOGENDRA CHANDRA CHAKRAVARTI, Babu AKHIL CHANDRA DATTA and Babu MANMATHA NATH ROY to move that in clause 111, the proviso to proposed section 174 (5) be omitted.

Rai HARENDRANATH CHAUDHURI to move that in clause 111, in the proposed proviso to new section 174 (5), line 3, the words "judgment-debtor or" be omitted.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur, to move that in clause 111, in proposed section 174 (5), proviso, lines 4 and 5, for the words "the amount" the words "half the amount" be substituted.

Babu AMULYA CHANDRA DATTA to move that in clause 111 in the proviso to section 174 (5), last line, after the words "amount in Court" the words "or furnishes sufficient security for the realisation of the decretal money" be added.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, to move that in clause 111, at the end of the proposed section 174 the following sub-section be added, namely:—

"(6) Notwithstanding anything contained elsewhere in this Act or in any other law a sale for arrears of rent, held under this Act shall not be set aside on the ground of any illegality or irregularity arising out of non-joinder of such persons as contemplated in section 146B, sub-section (1), except to the extent of the interest of such person."

Maulvi SHAMSUR-RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 112 in proposed section 174A (1)—

(a) in line 2 for the words and figures "section 174" the words and figures "sub-section (1) of section 174" be substituted, and

(b) in line 3 after the word "disallowed" the words "and no application under sub-section (3) of section 174 is pending" be inserted.

Maulvi TAMIZUDDIN KHAN to move that in clause 112, in sub-section (2) of the proposed section 174, for the words "thirty days" the words "sixty days" be substituted.

Babu SARAL KUMAR DUTT to move that in clause 112 in the proposed section 174, sub-section (2) proviso, line 2, after the word "persons" the word "injuriously" be inserted.

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUI RAHMAN to move that in clause 112 in proposed section 174A (2) : the proviso, the following shall be added, namely, " but no such noti shall be required if the application to set aside the sale has been mac under sub-section (1) of section 174."

Babu SARAL KUMAR DUTT to move that in clause 112 in tl proposed section 174, sub-section (4) be omitted.

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to mov that in clause 114 (a), the proposed clause (e) be omitted.

Maulvi SYED NAUSHER ALI to move that in clause 114, in th proposed clause (e) in sub-section (1) of section 178, for the wor " half " in line 4 the words " one-third of " be substituted.

Mr. D. N. ROY to move that in sub-clause (a) of clause 114, th proposed clause (g) in section 178 be omitted.

Raja BHUPENDRA NARAYAN SINHA Bahadur, of Nashipur, t move that in clause 114, the proposed new clause (h) of section 178 b omitted.

Maulvi NURUL HUQ CHAUDHURI to move that in clause 114(a in proposed section 178(h), lines 2 and 3, for the words and figures " ir trees on their holdings as provided in section 23A " the following word shall be substituted, namely, " as defined in section 23 and 23A of th Act."

Maulvi NURUL HUQ CHAUDHURI: Sir, I beg to move that ir clause 114 (a), after proposed section 178 (h), the word " and " be omitted and the following be added, namely:—

" (i) shall affect the provision of section 67 relating to interest payable on arrears of rent."

Section 67 of the Act reads as follows:—

" An arrear of rent shall bear simple interest at the rate of 12½ per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit, whichever date is earlier."

The provision of section 67 is governed by section 178 and specially by sub-section (3) (f), but the scope of that sub-section is limited in its application to contracts after the year 1885. Section 67 does not therefore touch the tenure-holders or raiyats who hold under contracts entered into before the year 1885.

6-30 p.m.

My object is that the interest should be limited in all cases, whether the tenant is a tenure-holder or an occupancy raiyat, whether their tenancies have been created before or after 1885, to the statutory rate of 12½ per cent. Sir, it very often happens that in leases rates of interests as high as 75 per cent. or more have been stipulated for. The courts of law are bound in the circumstances to give a decree at that rate of interest. Though we have got the Usurious Loans Act, it is not applicable to these cases. The result is that the courts are powerless even though they find that the rate of interest is as high as 75 per cent. Sir, if you judge the various kinds of contracts, it must be conceded that a contract between a landlord and a tenant is not like a contract between an ordinary creditor and an ordinary debtor. If the ordinary debtor can get relief not under the Contract Act but under the Usurious Loans Act, I cannot see why the tenure-holders and raiyats who have made themselves liable to pay a very high rate of interests, should not get the same relief. It is I believe the tendency of all modern legislatures to limit the power of the various classes of mahajans, whether they happen to be landlords or ordinary money-lenders, to claim only reasonable rates of interest. It is not possible in these cases for the defendants to prove under what circumstances the contracts at usurious rates of interest were entered into, for the simple reason that most of these contracts were entered into long ago and there is nothing to show now that any undue influence had been exercised by the landlord; but the very fact that any tenant agreed to pay as high a rate of interest as 75 per cent. or 150 per cent. by itself shows unmistakably that there must have been something wrong, otherwise no sane man with his eyes open would enter into such a contract. I know of good many cases where small tenure-holders agreed to pay rates of interest at 75 per cent. many years ago, but now what the landlord does is this: somehow or other he avoids taking rent. The result is that if the rent accumulates for three or four years, and the tenure-holder is liable to interest at the rate of 75 per cent., the landlord brings a suit for a large sum and the suit is decreed. This states of things ought to be put a stop to and I think it is the duty of all those who are responsible for this legislation to see that such rates of interest is disallowed. With these observations I move this amendment.

Mr. PRESIDENT: It has been represented to me by some members that the Council should continue till quarter past seven. Personally I have no objection; I would leave it to the members to decide. (Cries of "No, no; yes, yes."). I think the majority are in favour of continuing the Council. I will now adjourn the Council for 15 minutes for prayer.

[At this stage the Council was adjourned for 15 minutes.]

[After the adjournment.]

Mr. W. H. NELSON: Sir, section 67 of the Act is not touched in the present Bill, and in 1885, when it became law, it was provided in section 178 that nothing in any contract made after the passing of the Act, that is to say in 1885, should affect the rate of interest prescribed in section 67. Therefore, as the law stands at present, no contract between a landlord and his tenant, providing for interest on arrears exceeding 12½ per cent., can be enforced. That has been the law since 1885. The mover of this amendment wishes to make that law have retrospective effect, and cancel all contracts previous to 1885, in so far as they provide for a rate of interest exceeding 12½ per cent. Well, Sir, that is interfering with vested interests and with contracts which have been valid for over 50 years, and it is not our intention in the present Bill to cancel these old contracts.

Srijut NAGENDRA NATH SEN: Sir, I rise to support the amendment which has been moved by my friend Maulvi Nurul Huq Chaudhuri. It is a very simple matter and I am surprised that Mr. Nelson should have stood up on behalf of Government to justify their intention as regards this matter. It is our sad experience in the mufassal that not only illiterate raiyats but also the so-called bhadralog tenure-holders are affected by this. Maulvi Nurul Huq has given instances of such high rates of interests as 75 per cent., but I know of cases where interest at the rate of 150 per cent. has been realised from the tenant. Now, if there are arrears of rent for four years and if the interest is fixed at the rate of 150 per cent., then what will the figure amount to? This is an astounding state of affairs and the legislature ought to afford relief to the tenants in such cases. As Maulvi Nurul Huq Chaudhuri has observed, the Usurious Loans Act does not apply so far as these cases are concerned. Mr. Nelson has said that the legislation of 1885 did not affect the contracts entered into previous to that year. But under the old law it was held that the tenure-holder of a property in a permanently settled area was quite competent to give a lease on any term, and it has been held by the Judges of the Hon'ble High Court that contracts which affect the provisions of section 67 might be given effect to if they come under the provisions of section 179 as it now stands in the statute book. I would observe that the present proviso to section 179 intends to give relief exactly in the way in which relief is sought to be given by the amendment now under consideration.

The proviso runs thus: "Provided that such proprietor or holder shall not be entitled to recover interest at a rate exceeding that set forth in section 67 or anything that is an abwab or the recovery of which is illegal under the provisions of section 74 or sub-section (3) of section 77." If by this new proviso it is the intention of Government

to give relief to tenure-holders and other tenants in a permanently settled area and if in respect of leases entered into after the passing of this amending Act the provisions relating to interests cannot be given effect to, I do not know what objection there can be to doing away with the contractual relations between the landlord and the tenant in this respect.

7 p.m.

The simple fact is that whether in the 20th century contracts providing for the payment of interest at anything between 25 to 150 per cent. would be given effect to in a court of law. As has been observed by Mr. Nurul Huq Chaudhuri, courts are often powerless; not only so, much divergence of judicial opinion has arisen in cases of sale in execution of rent-decrees of tenancies governed by this clause of the law, where the law provides for the payemnt of the interest at more than 12½ per cent. Even to-day, there is one case before the Full Bench here on which decision has not yet been arrived at. Rai Bahadur Surendra Chandra Sen's Tenancy Act contains a number of cases in which there has been divergence of judicial opinion. One set of judges have held that, irrespective of the nature of the contract, the tenant or tenure-holder is bound to pay interest at the kabuliyat or patta rate; while in some other cases it has been held that in the case of an ordinary raiyat, if the matter of the lease is not specifically or expressly set forth in the declaration of the lease, the landlord is not entitled to recover interest at more than the ordinary rate. So, in order to do away with these conflicting decisions, and in order to take away the Shylock-like power of the landlords in exacting interest at more than 12½ per cent. per annum, it is desirable that sub-section (*f*) of section 178 (*1*) should be transposed and made (*i*), and that this sub-section (*f*) should be deleted altogether.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, in a matter like this, the duty of Government would end when, I, on behalf of Government, place before the House the true position. I am afraid the mover and supporters of this amendment are labouring under a great misapprehension. Section 178 has enacted as follows:—

"Nothing in any contract between a landlord and a tenant made before or after the passing of this Act....."

The expression "this Act" means the Act of 1885.

Then, I will draw the attention of the House to sub-clause (*f*) of clause (*3*) of section 178, which says:—

"Nothing in any contract made between a landlord and a tenant after the passing of this Act shall.....affect the provisions of section 67 relating to interest payable on arrears of rent."

So, under any contract entered into between a landlord and a tenant—not merely occupancy raiyats but all tenants—made after 1885, a tenant cannot be made to pay a rate higher than that provided for in section 67, i.e., originally 12 per cent.—now 12½ per cent.

The reference in the speeches of some members to section 179 is based on a confusion of ideas. Even if this amendment be passed, it will not in any way touch section 179. The reasons are in the first place this. Amendment is due to section 178 not to section 179 and also because it is a well-settled principle of interpretation of statutes that in case of an apparent conflict between two sections of an Act the provisions in the latter section will prevail. If you read these cases closely, you will find that in cases of conflict between section 179 and some earlier section of the Act section 179 always prevailed. Therefore, the object of the mover and of the supporters of this amendment will not be served even if it be carried, their object apparently being that in the case of permanent tenures rate of interest should be reduced even when in the contract a rate higher than 12½ per cent. has been provided. Mr. Nelson has already said how it will affect vested interests. We have drawn the attention of the House to this point, and if the House interfere with vested interests, the responsibility will be theirs. I want to mention further that this amendment will not touch permanent tenures or anything under section 179. But if the mover and the supporters of this motion want that, they should have moved a suitable amendment to section 179. Government have, however, taken steps somewhat on these lines but not so as to touch vested rights in the proviso to section 179. In the proviso to our Bill we say:—

"Provided that such proprietor or holder shall not be entitled to recover interest at a rate exceeding that set forth in section 67 or anything that is an abwab or the recovery of which is illegal under the provisions of section 74 or sub-section (3) of section 77."

Sir, this is our provision about permanent tenures.

Now, the effect of the passing of this amendment will only introduce a confusion. It will not affect permanent tenures; on the other hand, it will certainly interfere with vested rights if the interpretation that the mover and the supporters of this amendment desire be accepted by the Courts. I do not think that any sensible person could have any sympathy with a Shylock who wants to charge 150 per cent. or 175 per cent. as interest, but these are extreme cases. There may be cases, Sir, in which the landlord had entered into a contract, say before 1850, charging 15 per cent., and there might have been very good reasons for his doing so. Should then vested rights be interfered with? I would therefore ask the House to think twice before interfering with vested interests. I have placed all the issues, and if, even after a consideration of those issues, the House decide otherwise, I may repeat

that it will not serve the purpose they have in view. We on the Government benches have warned this House that it will be interfering with vested rights.

The motion of Maulvi Nurul Huq Chaudhuri was then put and a division was claimed by Babu Jogindra Chandra Chakravarti.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I may mention that we are not anxious to call for a division.

Mr. PRESIDENT: Sir Provash, you may not be anxious to call for a division but Mr. Chakravarti has called for it and I must ask the House to divide.

A division was then taken with the following result:—

AYES.

Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Banerjee, Babu Promotha Nath.
Chakravarti, Babu Jogindra Chandra.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Maulvi Nurul Huq.
Datta, Babu Amulya Chandra.
Dutt, Babu Sarat Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Gupta, Mr. Jogesh Chandra.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukherjea, Srijut Taraknath.
Pal Choudhuri, Mr. Ranjit.
Ray, Babu Nagendra Narayan.
Ray, Srijut Radha Gobinda.
Roy, Mr. D. N.
Roy, Mr. Kiran Sankar.
Sarker, Babu Naliniranjan.
Sen, Srijut Nagendra Nath.
Suhrawardy, Mr. H. S.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Dash, Mr. A. J.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Gilchrist, Mr. R. N.
Gupta, Rai Bahadur Mahendra Nath.
Hegg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Reid, Mr. R. N.
Sachse, Mr. P. A.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

The Ayes being 27 and the Noes 22, the motion was carried.

The following amendment was called but not moved:—

Maulvi TAMIZUDDIN KHAN to move that for clause 114 (*b*) (*i*), proposing the omission of clauses (*d*) and (*g*) of sub-section (3) of section 178, the following shall be substituted, namely, "(*i*) clause (*d*) shall be omitted."

Srijut NAGENDRA NATH SEN: Sir, I beg to move that in clause 114(*b*) (*i*) after the brackets and letter "(*d*)" the brackets and letter "(*f*)" shall be inserted, and in sub-clause (*b*) (*ii*) the brackets and letter "(*f*)" in the two places be omitted.

Mr. W. H. NELSON: On a point of order, Sir. This will be a consequential amendment, and in any case the necessary amendments will be made by the Legislative Department. I submit that it is not necessary to move it.

Mr. PRESIDENT: Yes, I should think so.

The motion was therefore not put.

The following amendment was called but not moved:—

Rai HARENDRANATH CHAUDHURI, Mr. BIJOY PRASAD SINGH ROY and Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that clause 115 be omitted.

Maulvi NURUL HUQ CHAUDHURI: Sir, I beg to move that in clause 115, to the proposed proviso to section 179, the following shall be added, namely:—

"Whether the liability to pay rent, interest or abwab arises in virtue of any contract or decree before or after the commencement of the Act."

Sir, this amendment is virtually of the same character as the one which the House has just accepted with only this difference; that whereas the former amendment related only to interest, this amendment covers the case of abwab as well. I accept the principle of the section, but I want that it should be extended retrospectively to cover cases prior to the amending Act. The result, therefore, will be that no landlord shall be entitled to demand abwab in respect of any contract entered into before the passing of the amending Act, which he could not do if the contract is one after the passing of this Act.

7-15 p.m.

It is not my purpose to restrict the provisions of this section to any particular class. We are here to see that nobody gets anything who is not justly entitled to it under the Acts or Regulations in force. The Permanent Settlement made it clear that after 1793 all payments in the form of abwabs were illegal, and it provided that after 1793 no landlord should be entitled to raise abwab or anything in the nature of abwab from the tenants. The Regulations stated that all dues which did not come within the definition of rent should be regarded as abwab. So under the law as it stands, abwab is illegal, whether levied

from tenure-holders or raiyats. But from the section as it now stands, the conclusion can be drawn that the restriction as regards abwab do not apply to cases where there is a contract or a decree, before the passing of this Bill. The result will be that while a landlord cannot take abwab from an occupancy raiyat, he can take abwab from a tenure-holder. My intention is to make abwab illegal in the case of all persons, whether it is taken from an occupancy raiyat or a tenure-holder. As the House has already accepted my amendment as regards interest, I hope that this amendment also will be accepted by the House.

Mr. W. H. NELSON: The amendment, Sir, is badly worded. I do not understand the reference in it to rent: "whether the liability to pay rent arises in virtue of a contract or decree before or after the commencement of the Act." As regards interest, the position is the same as in respect of the amendment previously discussed. This particular section of the Act refers to tenure-holders, and the policy of the Act has been that in respect of permanent tenures, there is freedom of contract. So far as abwabs are concerned, they are by section 74 of the Act illegal, and if it is a question whether the imposition is an abwab or not, if it is proved to be an abwab, then it is illegal; if it can be brought under the head of rent or some other legal payment, then it is not an abwab. There is the same objection to giving this section retrospective effect, as was pointed out with reference to the other amendment.

The motion of Maulvi Nurul Huq Chaudhuri was then put and lost.

Adjournment.

The Council was then adjourned till 2-45 p.m., on Tuesday, the 4th September, 1928, at the Town Hall, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE Council met in the Council Chamber in the Town Hall, Calcutta, on Tuesday, the 4th September, 1928, at 2-45 p.m.

Present.

The Hon'ble the President (Raja MANMATHA NATH RAY CHAUDHURI, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the Hon'ble Minister and 103 nominated and elected members.

Starred Question.

(to which oral answers were given).

Externee Bepin Behari Canguli.

*94. **Mr. SUBHAS CHANDRA BOSE:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state whether the attention of the Government has been drawn to a contradiction by Srijut Sushil Kumar Ghose in *Forward* of the 4th August, 1928, of a reply given by Government on the 3rd August, 1928, to a question put by Srijut Subhas Chandra Bose in the Bengal Legislative Council?

(*b*) What have the Government got to say in this matter?

(*c*) Is it a fact that a civil suit against externee Srijut Bipin Behari Ganguli has been instituted in the civil court of Baraset (24-Parganas) by one of his landlords?

(*d*) Is it a fact that on an enquiry made at Halisahar by an Inspector of the District Intelligence Branch, Alipore (24-Parganas), on the 29th July last, of the plaintiff landlord it was found to be true?

(*e*) If so, what steps have the Government taken or propose to take to defend the suit?

(*f*) Are the Government considering the desirability of releasing him in the near future?

MEMBER in charge of POLITICAL DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): (a) Yes.

(*b*) The facts have again been investigated, and Government are satisfied that the statement made on the 3rd August was correct.

(*c*) Yes.

(*d*) The question is not understood.

(*e*) None.

(*f*) Government are not prepared to publish their intentions.

Hand-loom industry in Bankura.

***95. Srijut RADHA GOBINDA RAY:** (*a*) Will the Hon'ble Minister in charge of the Department of Agriculture and Industries be pleased to state whether it is a fact that the silk cloth and cotton cloth cottage industries in the district of Bankura, specially in the subdivision of Vishnupur, are gradually dying out?

(*b*) Is the Hon'ble Minister aware that hundreds of families of weavers in the district of Bankura live upon the earnings of their looms?

(*c*) Is the Hon'ble Minister aware that the weavers of Vishnupur, Sonamukhi, Birsinga, Kotulpur, Bamunari, Jangpur, Changdoba, Brindabanpur, Patrasair and several other places in the district of Bankura are not in a position to earn more than 5 annas by working upon their looms for 8 to 9 hours a day?

(*d*) Is it a fact that several hundreds of families of weavers in the district of Bankura are in distressed condition and cannot manage to secure two full meals a day?

(*e*) Have the Government taken any step to investigate the reasons of the gradual deterioration of the silk cloth and the cotton cloth cottage industries in the district of Bankura?

(*f*) If the answer to (*e*) is in the affirmative, will the Hon'ble Minister be pleased to state—

(*i*) the reasons of such deterioration; and

(*ii*) whether any effective means to remedy the condition have been taken up by the Government?

(*g*) If the answer to (*e*) is in the negative, will the Hon'ble Minister be pleased to state whether the Government are considering the desirability of investigating and of taking steps in the matter?

MINISTER in charge of DEPARTMENT of AGRICULTURE and INDUSTRIES (the Hon'ble Nawab Musharruf Hossain, Khan Bahadur): (*a*) Government are aware that the hand-loom industry in the Bankura district is in a depressed state.

(*b*) Yes.

(*c*) Information at the disposal of Government shows that weavers can earn more than five annas a day, though in recent years their income has to a certain extent gone down.

(*d*) Government are aware that distress prevails in certain parts of Bankura district.

(*e*) Yes.

(*f*) (*i*) The importation of artificial silk cloth and the increased production of mill-made cloths such as were formerly made by the cotton hand-loom weavers has affected the local industries unfavourably: while in this year this condition has been aggravated by the prevailing scarcity.

(*ii*) Yes. The Industries Department conducted demonstrations in improved methods of weaving in 1927; a peripatetic weaving school was started at Sonamukhi in June, 1928; the Co-operative Department has been working in the district for some time; and the recently established Central Sale Depôt in Calcutta is intended to find a market for these as well as other cottage industries.

(*g*) Does not arise.

Srijut RADHA GOBINDA RAY: Will the Hon'ble Minister be pleased to state what is the exact amount of income of the weavers?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I want notice of this question.

Srijut RADHA GOBINDA RAY: The Hon'ble Minister has stated in answer to question (*c*) that weavers can earn more than five annas a day; will the Hon'ble Minister be pleased to state how much more than five annas a day it is?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: It is not possible to answer that.

Srijut RADHA GOBINDA RAY: Will the Hon'ble Minister be pleased to state whether it is a fact that weavers do not get Rs. 2 a day?

Mr. PRESIDENT: That question does not arise.

Proposed Civil Medical Service.

***96. Babu NALINIRANJAN SARKER:** (*a*) Will the Hon'ble Minister in charge of the Department of Local Self-Government be pleased to state what effect, if any, has been given to the recommendations of the Lee Commission of 1924 regarding the formation of a Civil Medical Service in Bengal?

(*b*) If no effect has been given, will the Hon'ble Minister be pleased to state reasons for this?

(*c*) Is it a fact that these recommendations have been given effect to in other provinces?

(*d*) Are the Government contemplating giving effect to any of the recommendations? If so, when?

(*e*) Are the Government contemplating selecting members of the independent medical profession in Bengal in the proposed Civil Medical Service?

(*f*) If it is a fact that there was a difference of opinion regarding some of the recommendations of the Lee Commission between the Hon'ble the Minister in charge and the Surgeon-General?

(*g*) If so, what were the points of difference?

(*h*) If the answer to (*f*) is in the affirmative, will the Hon'ble Minister be pleased to state whether any reference was made to His Excellency the Governor?

(*i*) If so, what was the final decision arrived at by His Excellency?

MINISTER in charge of DEPARTMENT of LOCAL SELF-GOVERNMENT (the Hon'ble Nawab Musharruf Hosain, Khan Bahadur): (*a*) None. The Civil Medical Service, the formation of which was recommended by the Lee Commission, was to take the place of the Indian Medical Service which the Commissions proposed, should be abolished.

(*b*) Because it has been decided by the Secretary of State not to abolish the Indian Medical Service and because there is already a Provincial Medical Service. As the number of Indian Medical Service officers decreases, it may become necessary to expand the Bengal Medical Service or to form a new service, but no immediate action is needed.

(*c*) Government have no information.

(*d*) Not at present.

(*e*) *Vide* answer to (*b*) above. This will be considered in due course in connection with the future of the Bengal Medical Service.

(*f*) No.

(*g*), (*h*) and (*i*) Do not arise.

Dr. BIDHAN CHANDRA ROY: Will the Hon'ble Minister be pleased to state whether it is the considered opinion of Government that there should be no Civil Medical Service in Bengal as proposed by the Lee Commision in 1924?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: As far as I know, the Secretary of State quite recently issued a communiqué in which he stated that so far as the Indian Medical Service officers are concerned, some of them must be retained in the province, and as regards the Provincial Medical Service, its strength will depend upon the exact number of Indian Medical Service officers that will have to be retained. All these things are mixed up, and the question of the Provincial Medical Service will have to be reconsidered.

Dr. BIDHAN CHANDRA ROY: Is the Hon'ble Minister aware that the Civil Medical Service in Bengal, as proposed by the Lee Commission, includes members of the Indian Medical Service as well as the Provincial Medical Service?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I want notice of this.

Dr. BIDHAN CHANDRA ROY: Is the Hon'ble Minister prepared to say that there has been no difference of opinion with regard to question (*f*) between the Surgeon-General and the Hon'ble Minister in charge as regards some of the recommendations of the Lee Commission?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I think the answer is quite clear. There is none.

Dr. BIDHAN CHANDRA ROY: Is the Hon'ble Minister prepared to say that with reference to his predecessor or himself?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I am speaking of my predecessor.

Dr. BIDHAN CHANDRA ROY: Will the Hon'ble Minister be pleased to state whether there is anything in the file to show that a reference was made to His Excellency the Governor in regard to the subject matter in question (*f*)?

The Hon'ble Nawab MUSHURRUF HOSAIN, Khan Bahadur: That question does not arise, because it has already been answered.

Indian Medical Service officers' cadre.

*97. **Babu NALINIRANJAN SARKER:** (*a*) Will the Hon'ble Minister in charge of the Department of Local Self-Government be pleased to state whether it is a fact that the following appointments

which are now being held by Indian Medical Service officers should have been made over to non-Indian Medical Service officers according to the recent despatch of the Secretary of State on this subject, namely:—

Resident Surgeon, Eden Hospital,

Resident Surgeon, Medical College Hospitals,

Resident Surgeon, Presidency General Hospital,

2nd Physician, 2nd Professor of Medicine,

2nd Professor of Midwifery and Professor of Clinical and Operative Surgery, Medical College Hospitals,

Police Surgeon,

His Excellency the Governor's Surgeon, and

Superintendent of the Campbell Hospital?

(*b*) Is it a fact that in spite of the above despatch of the Secretary of State, the Principalship of the Government Medical College, Calcutta, is being held as an officiating appointment by a member of the Indian Medical Service?

(*c*) Is it a fact that the said Principalship should have been held by a non-Indian Medical Service officer according to the said despatch?

(*d*) Is it a fact that professorial and other posts that have been permanently or temporarily vacated by the retirement or leave of the Indian Medical Service officers have been repeatedly filled by other members of the Indian Medical Service as officiating posts?

(*e*) If so, does this procedure conform to the recent Government recommendations and despatch?

(*f*) To which of the recommendations of the Secretary of State's despatch have the Government given effect regarding the reduction of the Indian Medical Service officers' cadre?

(*g*) Is it a fact that the filling up of the appointments in the Medical College Hospitals in Calcutta by European members of the Indian Medical Service has resulted in a shortage of these officers in the District Civil Surgeoncies?

(*h*) Is it not a fact that according to the despatch and communiqué of the Secretary of State, the District Civil Surgeoncies, namely, those of Midnapore, Burdwan, Rajshahi, Bakarganj, Murshidabad and Mymensingh, should be filled by European Indian Medical Service officers?

(*i*) If the answer to (*g*) and (*h*) are in the affirmative, are the Government contemplating measures for discontinuance of measures contrary to the Secretary of State's recommendations in this respect?

(*j*) If so, what are the measures contemplated by the Government?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: (*a*) All of these appointments, except that of Resident Surgeon, Eden Hospital, are held by Indian Medical Service officers. The posts of Resident Surgeon, Presidency General Hospital, and of Superintendent of the Campbell Hospital were reserved for the Indian Medical Service under regulations made by the Secretary of State in 1923. Under those regulations the other posts were to be reserved so long as in the opinion of the Governor-General in Council it was necessary to reserve them in the interests of the existing incumbents. Neither those regulations nor the orders of the Secretary of State in the recent press communiqué stated that any posts were to be made over to non-Indian Medical Service officers, but simply that in certain circumstances certain posts were no longer to be treated as reserved for the Indian Medical Service.

(*b*) Yes.

(*c*) No. The post is one that was reserved for the Indian Medical Service under the regulations of 1923 and, as stated in paragraph 8 of the press communiqué, the existing rights of Indian Medical Service officers in civil employ are to be fully preserved and prospects equivalent to those afforded by the 1923 regulations. Lists of reserved posts are to be retained for them.

(*d*) Yes.

(*e*) Reference is invited to the answer given to (*a*) above. Some of the posts, the reservation of which is no longer necessary in the interests of the incumbents, have been thrown open to the medical profession in general with the approval of the Government of India, and appointments have been made on the recommendation of a Select Committee after advertisement. So far as other posts are concerned, the orders of the Government of India have not been obtained yet, as the procedure to be followed in filling up these posts was under consideration.

(*f*) Does not arise. The reduction of the Indian Medical Service officers' cadre is a matter that concerns the Secretary of State and not the Local Government.

(*g*) There is a shortage of European officers of the Indian Medical Service available for appointment to Civil Surgeoncies.

(*h*) These Civil Surgeoncies are included in the list, thirteen in number, of those that are reserved for Indian Medical Service officers. Ten of them are earmarked for European officers of that service.

(*i*) and (*j*) The matter is under consideration.

Dr. BIDHAN CHANDRA ROY: Is the Hon'ble Minister aware that there has been a communiqué issued by the Secretary of State regarding the Indian Medical Service officers in Bengal later than the year 1923?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: Yes.

Dr. BIDHAN CHANDRA ROY: Is the Hon'ble Minister aware that according to that communiqué there would be only three officers of the Indian Medical Service reserved for the Medical College, Calcutta?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I want notice of this question.

Dr. BIDHAN CHANDRA ROY: Is the Hon'ble Minister aware that if that be a fact, then the appointment of an Indian Medical Service officer as Principal of the Medical College is against that communiqué?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I want notice of this.

Dr. BIDHAN CHANDRA ROY: May I ask the Hon'ble Minister to explain what he means by saying in the first part of his answer that "Neither those regulations nor the orders of the Secretary of State in the recent press communiqué stated that any posts were to be made over to non-Indian Medical Service officers, but simply that in certain circumstances certain posts were no longer to be treated as reserved for the Indian Medical Service?" If there are certain posts which are not reserved for the Indian Medical Service, how are these posts going to be filled up?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: There are three classes of posts reserved for the Indian Medical Service—

(1) those that are specially reserved for them,

(2) those that are held by the present incumbents, which must be held by them till their retirement, and

(3) certain posts which are not really reserved for the Indian Medical Service, but are held by them and reserved for them as long as the present incumbents do not retire.

Dr. BIDHAN CHANDRA ROY: May I repeat my question? If there are certain posts which are not reserved for the Indian Medical Service, how are they to be filled if they are not to be filled by non-Indian Medical Service officers?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: If they are not specially meant for the Indian Medical Service, then they will be filled by Provincial Medical Service officers.

Dr. BIDHAN CHANDRA ROY: With reference to answer (*c*)—"The post is one that was reserved for the Indian Medical Service under the regulations of 1923"—is the Hon'ble Minister prepared to state that in view of the recent communiqué of the Secretary of State in 1928, that communiqué does not do away with the regulation promulgated by the Secretary of State in 1923?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I want notice of this.

Dr. BIDHAN CHANDRA ROY: Is the Government prepared to give effect to the recent communiqué of the Secretary of State?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I am not prepared to answer that question now.

Dr. BIDHAN CHANDRA ROY: The question under (*f*) was whether Government are prepared to give effect to any of the recommendations of the Secretary of State's despatch regarding the reduction of the Indian Medical Service officers' cadre. The answer was that the reduction of the Indian Medical Service officers' cadre is a matter that concerns the Secretary of State and not the Local Government. May I enquire whether the Local Government are prepared to give effect to the communiqué which the Secretary of State issued this year with regard to the Indian Medical Service officers employed in the Civil Department?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I want notice of this. This relates to the policy of the department in the future.

Dr. BIDHAN CHANDRA ROY: May I enquire if the Hon'ble Minister has read the recent communiqué of the Secretary of State?

Mr. PRESIDENT: I do not allow that question, nor does it arise.

Election to the Council of Medical Registration.

*98. **Babu NALINIRANJAN SARKER:** (*a*) Will the Hon'ble Minister in charge of the Department of Local Self-Government be pleased to state whether it is a fact that the Government servants are not allowed to stand as candidates for election to the Municipalities, District Boards, Union Boards, Calcutta Corporation, Senate, Improvement Trust and the Bengal Legislative Council under the Government Servants' Conduct Rules?

(*b*) If so, do the same rules apply in case of all elected bodies under statutes?

(*c*) Do the Government Servants' Conduct Rules which prohibit candidature for election apply to the members of the Government Medical Department?

(*d*) Are the members of the Government Medical Department allowed to contest the elected seats in the Council of Medical Registration?

(*e*) If so, what is the rule under which they are so exempted?

(*f*) If the candidature for election to the Council of Medical Registration of the members of the Government Medical Department is not permitted by rules guiding the Government servants, what are the reasons for such members being allowed to be elected instead of being nominated by the Government?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: (*a*) The Government Servants' Conduct Rules do not debar officials from standing for election to local authorities or to the Senates of Universities. Section 89B of the Government of India Act disqualifies officials from election to Legislative Councils.

(*b*) and (*c*) Do not arise.

(*d*) Yes.

(*e*) and (*f*) Do not arise.

Dr. KUMUD SANKAR RAY: Will the Hon'ble Minister be pleased to state whether Government servants take the permission of the heads of their departments before they stand as candidates for election to local bodies?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: They are not required to do that.

Dr. KUMUD SANKAR RAY: Will the Hon'ble Minister be pleased to state if permission has ever been taken in any case?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: Not that I am aware of.

Dr. KUMUD SANKAR RAY: Has permission been asked for in any case?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: I am not aware of that.

Ex-detenu Kiran Chandra Mukherjee.

*99. **Babu AKHIL CHANDRA DATTA:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state whether it is a fact that on the 27th July last some Criminal Investigation Department officers went to Srijut Kiran Chandra Mukherjee in order to serve an order of release which contained certain conditions?

(*b*) Is it a fact that Kiran Babu refused to accept the order?

(*c*) Is it a fact that after Kiran Babu's refusal to accept the said order it was hung up on the wall of his residence?

The Hon'ble Mr. W. D. R. PRENTICE: (*a*) Government are informed that one Criminal Investigation Department officer, accompanied by a head-constable, went to serve an order.

(*b*) Yes.

(*c*) No.

Contai-Belda Railway.

*100. **Babu MAHENDRA NATH MAITI:** Will the Hon'ble Member in charge of the Department of Public Works (Railways) be pleased to state whether the Bengal-Nagpur Railway Company contemplates taking up the work of the proposed Contai-Belda Railway this year?

MEMBER in charge of DEPARTMENT of PUBLIC WORKS (RAILWAYS) (the Hon'ble Mr. A. Marr): Yes, the construction of the line is about to start.

Unstarred Question

(answer to which was laid on the table).

Bagmara Union No. 1 in Tippera.

71. **Maulvi ASIMUDDIN AHAMAD:** (*a*) Is the Hon'ble Minister in charge of the Department of Local Self-Government aware that

Babu Girish Chandra Roy Chowdhury, a member of Union No. 1, Bagmara, police-station Lakshan, district Tippera, resigned his seat more than a year ago?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Minister be pleased to state—

(*i*) whether the resignation of the said member has been accepted; and

(*ii*) whether any vacancy has been declared in his place?

(*c*) Has the Hon'ble Minister any knowledge as to whether the said member is attending any meetings of the Union Board since he tendered his resignation?

(*d*) Is the Hon'ble Minister aware that if a member does not attend six consecutive meetings, his seat is automatically declared vacant?

(*e*) If the answer to (*c*) is in the negative, will the Hon'ble Minister be pleased to state why the rule is not applied in the case of the said member?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: (*a*), (*b*) and (*c*) Enquiry was made of the District Magistrate who reports that no intimation of the alleged resignation has been received either in the subdivisional office or in the District Board office, nor has it been reported that the member absented himself from six consecutive meetings of the Union Board.

(*d*) Not automatically. Under section 12 of the Village Self-Government Act the District Board is not bound to remove him.

(*e*) Does not arise.

Maulvi ABUL KASEM: Will the Hon'ble Minister be pleased to state whether an enquiry was made by the District Magistrate from the Union Board about the facts stated before answering the question?

The Hon'ble Nawab MUSHARRUF HOSAIN, Khan Bahadur: Enquiry has been made by the District Magistrate in the proper way.

Motion for an adjournment of the House.

Maulvi ABUL KASEM: I wanted to move an adjournment of the House to consider a question of urgent public importance, namely, the disturbance created by the communal riot at Kharagpur. I am advised that as we are in the midst of the discussion of a very important legislation and the members of this House are more or less tired

out sitting from day to day, and want to get away, I ask for your permission, Sir, to put certain questions to the Hon'ble Member in charge of Police Administration at short notice.

Mr. PRESIDENT: Yes you have my permission.

Maulvi ABUL KASEM: Will the Hon'ble Member in charge of Police Department be pleased to make a statement about the state of affairs at Kharagpur arising out of the communal riots there? Is it a fact that several Muhammadans have been massacred in their homes, and, if so, what steps have been taken by Government to protect peaceful citizens in that area?

MEMBER in charge of POLICE DEPARTMENT (the Hon'ble Mr. W. D. R. Prentice): We have not yet received any full accounts from Kharagpur. The Commissioner went down there yesterday, and we have not yet received his report, but I shall give what information we have from the earlier reports written by the District Magistrate in the midst of his efforts to restore peace in that unfortunate place. We have received two reports from him, and from these we learn that ever since the last communal riots there has been a good deal of trouble at Kharagpur. The officers have been doing all they can, by constant meetings and discussions with various communities, to restore peace. As late as the 1st September, Mr. Goode was at Kharagpur holding conferences with the various communities and trying to arrive at a settlement of the various matters that remained at issue since the recent riots. He was there until the evening and went back to Midnapore. Before he went back, he saw there was a feeling of excitement in the bazar, and he took steps to strengthen the force of Police, in Kharagpur by deputing 50 extra men from Midnapore. This raised the number of Police in Kharagpur to 70.

I hope in making this statement to avoid mentioning any incident that will reflect on the conduct of any particular community. I will, therefore, confine myself strictly, as far as possible, in this statement of mine to what was done, and not deal with the cause. Mr. Goode and Mr. Bavin, the Superintendent of Police, went back to Midnapore in the evening. At about 10 p.m. they heard that trouble had broken out at Kharagpur. This trouble had broken out at about 9 p.m. and was due to the explosion of a bomb in the Sikh Gurdwara. One of the bomb was found not exploded. It was a cigarette tin filled with shots and pieces of iron tightly packed on gun-powder by tow and rugs. The result of the explosion at the Gurdwara was that 2 sikhs were severely wound and 9 slightly wounded. In addition, a Muhammadan was discovered severely wounded elsewhere in Kharagpur. Mr. Goode and Mr. Bavin arrived back in Kharagpur by about

11 p.m., and they went out on patrol and stayed out till 2 a.m., taking steps to keep the peace. They were out again with the Officer Commanding the local regiment of the Auxiliary Force (India) up till 5 a.m., and found considerable unrest. By about 7 a.m., the Hindus, including the Telegues, began to collect. By about 7-30, it was discovered that three Muhammadans and one Muhammadan woman had been killed in their quarters and another man—it was not stated to what community he belonged—was found severely wounded elsewhere. Mr. Goode and the local officers with the force at their command went about and scattered the mob as far as possible. At 8-30, the situation was so serious that they found it necessary to call out the Auxiliary Force (India). About 9 o'clock, there was a large collection of Hindus and Mr. Goode drew up a force of Police and a detachment of the Auxiliary Force (India) on the road across the maidan near the Gurdwara. He ordered the mob to disperse, but they refused. He warned them that if they did not disperse in 5 minutes, he would be compelled to give the order to fire. He gave them more than 5 minutes. Finally, he ordered one constable to fire one round of buck-shot. One round was fired and 4 people were wounded. The crowd later dispersed. That afternoon a Hindu was found stabbed. The next morning the dead body of a Muhammadan was found lying on the maidan. The casualties, so far as is known up to date, reported to the hospital were 7 killed, 4 of them Muhammadans and 34 wounded. I have no figures regarding the communities to which the wounded belong.

I have been asked what steps Government have taken. We got information of this outbreak during the night of Saturday/Sunday and on Sunday morning 100 of the Eastern Frontier Rifles were rushed from Chinsura by special train to Kharagpur. Since then we have sent 120 Armed Police from Howrah and the 24-Parganas and another 100 of the Eastern Frontier Rifles arrived to-day at Kharagpur. The result is that we have strengthened the force at Kharagpur by 370 men. In addition to that, the Auxiliary Force (India) were called out to assist the civil authorities.

Those are the facts as far as we have them. Mr. Cook, the Commissioner, went down there yesterday. We hope to receive his report possibly to-morrow; in any case, we hope to receive it in the course of the next two or three days.

Maulvi ABUL KASEM: We have heard that the Police Force at Kharagpur has been strengthened. Has there been any prevention of crime since then?

The Hon'ble Mr. W. D. R. PRENTICE: Since the shooting on Sunday, we have had no report of mob violence. The situation is reported to be well in hand.

Maulvi ABUL KASEM: Was the Police force strengthened long before Sunday?

The Hon'ble Mr. W. D. R. PRENTICE: The Police Force was strengthened on Saturday.

GOVERNMENT BILL.

The Bengal Tenancy (Amendment) Bill, 1928.

The consideration of the Bengal Tenancy (Amendment) Bill, 1928, was then resumed.

The following amendments were called but not moved:—

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 116, for proposed section 182, the following shall be substituted, namely:—

Homestead.

"182. When a raiyat or an under-raiyat holds in homestead otherwise than as part of his holding in respect of which he is a raiyat, whether under the same landlord or not, his status in respect of his homestead shall be that of a raiyat, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to raiyats."

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in clause 116, proposed section 182, for the words beginning with "when a raiyat" and ending with "to that village," the words "when a raiyat or an under-raiyat holds his homestead otherwise than as part of his holding as a raiyat or an under-raiyat, but holds lands as a raiyat or an under-raiyat in the same or any contiguous villages" be substituted, and at the end of the section the following words be added, namely, "otherwise the incidents of the homestead shall be regulated by the provisions of the Transfer of Property Act, 1882."

Babu JITENDRALAL BANNERJEE to move that in clause 116, in proposed section 182—

(1) in lines 1 and 2 after the words "holds his homestead" the words "or has taken lease of a tank or of pasturage land," be inserted;

(2) in lines 5 and 6 for the words "in respect of his homestead" the words "in respect of such homestead, tank or pasturage land," be substituted;

(3) in lines 7 and 8 for the words "the landlord of the homestead" the words "his immediate landlord," be substituted; and

(4) in line 9 after the words "such homestead" the words "tank or pasturage land," be inserted.

Mr. BIJOY PRASAD SINGH ROY to move that in clause 116 in the proposed section 182, the words "otherwise than as part of his holding" and the words "or any village contiguous to that village" be omitted.

Babu AMARENDRA NATH GHOSE to move that in clause 116, in proposed section 182, in lines 4 and 5, the words "within the same village or any village contiguous to that village" be omitted.

Babu AMARENDRA NATH GHOSE to move that in clause 116, in proposed section 182, in lines 4 and 5, for the words "any village contiguous to that village" the words "any of the villages in the neighbourhood within the radius of 5 miles from the boundary of that village" be substituted.

Mr. D. N. ROY: In the absence of Rai Harendranath Chaudhuri whom I have consulted in this matter, may I have your permission to move the next amendment?

Mr. PRESIDENT: Yes, you may.

Mr. D. N. ROY: I beg to move that in clause 121 in sub-clause (*i*) of the proviso to sub-section (*1*) of the proposed new section 188 after the word and figures "section 26F" the words and figures "or under section 26J" be added.

MEMBER in charge of DEPARTMENT of REVENUE (LAND REVENUE) (the Hon'ble Sir Provash Chunder Mitter): I accept this amendment.

The motion was then put and agreed to.

The following amendment was called but not moved:—

Babu NAGENDRA NARAYAN RAY to move that in clause 121 in proposed section 188 (*1*) in proviso, clause (*ii*), line 3, after the figures "30" the word and figures "or 48B" be inserted.

Maharaj Kumar SRIS CHANDRA NANDY: I beg to move that in clause 121, in the proviso to the proposed section 188 (*1*) (*iv*), line 2, for the figures and word "78, 80 and 81" the figures and word "78, 80, 81 and 84" be substituted.

The following amendment was called but not moved:—

Babu NAGENDRA NARAYAN RAY to move that in clause 121 proposed section 188 (*2*), proviso, line 2, after the figures "30" the words and figures "or section 48B" be inserted.

Rai MAHENDRA NATH GUPTA Bahadur: I oppose this amendment. Acquisition of land under the provisions of section 84, at the instance of landlords is very rare, and unnecessary complications would be introduced if co-sharer landlords are permitted to apply for acquisition; each co-sharer will come separately, and considerable confusion will be created. If really it is a good and necessary purpose, it is desirable that all co-sharer landlords should join together and come to the Court. So I oppose this amendment.

The motion of Maharaj Kumar Sris Chandra Nandy was then put and lost.

3-15 p.m.

The following amendments were called but not moved:—

Rai HARENDRANATH CHAUDHURI to move that in clause 121, the proviso to sub-clause (*2*) in line 14 after the word "shall" and before the words "be binding" the following words be inserted: "save where the matter is provided for in a separate contract between a co-sharer landlord and the tenant."

Khan Bahadur Maulvi AZIZUL HAQUE to move that in clause 123 (*4*), in proposed clause (*5*), sub-clause (*d*) be omitted.

Mr. PRESIDENT: I propose to have one discussion on Nos. 1313 to 1327.

The following amendments were called but not moved:—

Rai HARENDRANATH CHAUDHURI to move that at the end of sub-clause (*4*) of clause 123 the following be added after proposed sub-section (*5*), namely:—

"Provided that no rules made under this section shall be notified in the official gazette and be deemed duly promulgated unless they are communicated to and approved by the Bengal Legislative Council."

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR-RAHMAN to move that in clause 123, after proposed sub-section (*5*), the following proviso shall be added, namely:—

"Provided that no such rules shall have the force of law unless the Bengal Legislative Council Standing Committee on Land Revenue have assented to the passing of the rules."

Maulvi SHAMSUR-RAHMAN and Srijut NAGENDRA NATH SEN to move that in clause 123, at the end of section 189 of the Act, the following proviso be added:—

"Provided that no such rules shall have the force of law unless the Bengal Legislative Council by a Resolution recommends that the rules may have the force of law."

Srijut NAGENDRA NATH SEN: I move that in clause 124, in proposed section 191, in line 12, for the words "whether before or after passing of this Act" the words and figures "after the passing of the Bengal Tenancy Act, 1885" be substituted.

In this connection I shall first of all tell the House that the changes proposed by clause 124 in the Bill, amalgamating old sections 191 and 192, are more comprehensive and far-reaching in character than appears at first sight. The powers proposed to be given to the Revenue Officers are more drastic, larger and, perhaps, more arbitrary than are possessed by any other class of officers. In fact, the new section is not to be restricted in its application to permanently-settled districts. In the Amendment Bill of 1925, which was referred to the Select Committee, sections 191 and 192 of the Bengal Tenancy Act were untouched. In clause 124 of the present Amendment Bill, 1928, the two sections 191 and 192, have been amalgamated. In the "Statement of Objects and Reasons" nothing has been said as regards the object of amalgamating the two sections. In the "Notes on Clauses" published in the *Calcutta Gazette*, dated the 12th July, 1928, along with the "Statement of Objects and Reasons" of the present Amendment Bill, 1928, it has been pointed out by the Secretary to the Government of Bengal that sections 191 and 192 have been amalgamated, and that it has been made clear that in fixing fair and equitable rents of under-tenants, the ordinary rules of enhancement and reduction would be applicable, and that it has also been made clear that the 10 per cent. allowance to a tenure-holder may be divided between him and the under-tenures created by him. If you read the original section 191, it will make my meaning clear. It has been said that contracts and contract laws do not find any place in land tenure laws. That is very true. That is true in giving relief to illiterate tenants. But for the Government to ignore contracts and contract laws and decisions of the highest judiciary and place the people and their valuable rights in lands to the mercy of Revenue Officers is something which is unimaginable. With regard to cases in which land revenue is for the first time made payable in respect of lands, and which are covered by sub-clause (*a*) under the first paragraph of the proposed section, it may with some show of reason be said that no one can grant more than that what he himself has, and we will revert to this grant later on. With regard to (*b*), no such justification is available to Government. This class

of cases was not covered by the existing section 191, and Government have been pleased not to give any reasons in the "Statement of Objects and Reasons" as given in the Bill. What I would like to mention is that this proposed change was not in the Bill, which was circulated in the year 1926. In the year 1926, Government did not feel the necessity of the proposed change. What has happened in the meantime necessitating this drastic change for acquiring powers to deal with vested rights? In this connection, I would refer the House to page 115 (473) (2) and (3) of the Survey and Settlement Manual of 1917. From this it will be seen that Government intend to acquire more power under this Bill. The existing sections 191 and 192 prescribe the manner in which Revenue Officers should deal with contracts and contractual relations existing between persons. When the estates of such persons are escheated or forfeited to the Crown, they cannot any longer be said to be subject to a subsisting permanent settlement, and Government intend to acquire powers under the amended law to deal with contracts and leases made by such persons in favour of innocent third parties who could never have the remotest idea of knowing that their landlords' interest might at any time be a forfeit or escheat to the Crown and that their very existence would be left to the mercy of a Revenue Officer. That is not all. There are cases in which Government have found it very difficult to deal with escheated under-tenures which have been resumed.

In all cases of resumption proceedings, they have been made by legal powers. Some have come to them by compromise. Moreover, in cases of estoppels, Government have found difficulties. The intention of the Government is to brush aside all contractual relations and everything enunciated under the general provisions of laws governing the land tenures, excepting those governing agricultural interests. Now, Sir, it may be intelligible that Government intend to acquire power in cases arising after the passing of the Bengal Tenancy Act. But why should power be taken in regard to cases before the passing of the Bengal Tenancy Act. Where is the equity?

Amongst other changes, introduction of the word "before" in the section has materially changed the law, and under the colour of amalgamation, a substantial statute law has been sought to be imposed upon tenure-holders in temporarily-settled estates, and thereby take away some of their most important inherent rights. It wants to nullify all bona fide contracts entered into between the tenure-holders and their landlords (settlement-holders from Government) before the passing of the Bengal Tenancy Act, 1885.

Section 192, of the Bengal Tenancy Act, 1885, was introduced with the object of authorising Revenue Officers to ignore all engagements between settlement-holders and tenure-holders fixing rents beyond the term of the settlement. Section 192 gave power to a Revenue Officer

for the sake of convenience to ignore all such engagements fixing rents beyond the term of the settlement at the time of next assessment, at the instance of either of the parties. The object of the amendment of 1907 to the section was to counteract fraudulent or collusive engagements with the object of reducing the total assets of the estate by adding the words "or of his own motion." The real object of the section as amended in 1907, is, therefore, very clear, and cannot on any stretch of imagination be extended to cases where the contracts were entered into before the passing of the Bengal Tenancy Act bona fide as owner or proprietor or occupier before he obtained settlement from Government. In Bengal, there are many contracts made by zamindars with tenure-holders of lands bona fide believed to be within their zamindari but subsequently resumed by Government, sometimes paying malikana to the ex-proprietors. In the last mentioned class of cases, viz., contracts existing at the time of resumption, it is absolutely illegal to ignore them, whereas in the other cases the tenure-holder's rights could only be ignored after paying a proper compensation to them. Sometimes these tenure-holders have right of occupying or some sort of preferential rights to the class of rights ignorable by Revenue Officers as they arise out of diverse circumstances. In many cases, heavy premiums were paid bona fide for fixed or favourable terms; in others, large amounts of money and labour spent for making the lands fit for cultivation. These are all good considerations, and could not be brushed aside with impunity. Each contract has to be individually examined before it can be ignored, and the binding nature of the tenure would depend upon the merits of each case. No hard-and-fast rules could be laid in a statute in respect of all such contracts. All these contracts could not be classed under one head, so that a cut-and-dry statutory provision would control all. Such a view of the state of law is supported by several decisions of the Civil Court. Their Lordships of the Judicial Committee have in the case reported in I.L.R. 30, Cal., page 811, held a contract of the above nature to be binding. The Hon'ble Justice Sir Nalini Ranjan Chatterji, sitting with Mr. Justice Pearson, has in his judgment, reported in 35 C.L.J., page 14 (Prodyot Kumar Tagore *vs.* Tweedie) threshed out all the previous decisions and clearly expressed the purpose and object of section 192 and has positively laid down that contracts entered into before the passing of the Bengal Tenancy Act of 1885 could not be affected by section 192.

Sir, I would like to impress upon the House that the proposed change is very dangerous. Suppose the land of a détenu is forfeited by Government. The old Act did not give Revenue Officers power to deal with it. But the new proposed section is very wide and comprehensive, and it gives wide powers to the Revenue Officers. Under all these circumstances, I would respectfully submit that the amendment which I have proposed should be accepted by the House.

The following amendment was called but not moved:—

Rai HARENDRANATH CHAUDHURI to move that in clause 124 in the proposed new section 191, line 12, the words "whether before or" be omitted.

Srijut TARAKNATH MUKERJEA: I beg to move that in clause 124, in line 12, for the words "whether before or after the passing of this Act," the words "after the date of any settlement of land revenue which the Government had first made of the estate" be substituted.

The following amendments were called but not moved:—

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 124 the proviso to the proposed section 191 be omitted.

Babu ROMES CHANDRA BACCHI to move that in clause 124 in the proviso to proposed section 191, line 3, for the words and figures "10 *per centum*" the figures and words "25 per cent." be substituted.

Srijut NAGENDRA NATH SEN: I beg to move formally that in clause 124, after proposed section 191, the following further proviso be added, namely:—

"Provided also that the provisions of this section shall not affect any judgment already passed or affect any decision of any case pending before a Civil or Revenue Court."

The following amendments were called but not moved:—

Mr. A. K. FAZL-UL HUQ, Babu BEJOY KRISHNA BOSE; Srijut BIJAY KUMAR CHATTERJEE, and Srijut TARAKNATH MUKERJEA to move that in proposed section 191 the following be added after the proviso:—

"Provided also that the provisions of this section shall not affect any final judgment already passed by or affect the decision of any case pending before a Civil Court."

Dr. KUMUD SANKAR RAY and Mr. KIRAN SANKAR ROY to move that in clause 124 after proposed section 191, proviso, the following be added, namely:—

"Provided also that nothing in this section shall affect the rights and obligations subsisting between landlord and tenants so long as their possession is not disturbed by any settlement contemplated by this section."

Mr. B. E. J. BURGE: In dealing with this amendment, I may say that the mover, Srijut Nagendra Nath Sen, has covered a very large area in his speech, and I would like to take his arguments point by point as far as possible. He finds a very insiduous proposal in the Government amendment proposed in the Bill. He objects to the words "subsisting permanent settlement," and he justifies that by saying and quoting from the Survey and Settlement Manual that certain lands are particularly meant to be dealt with. The difficulty that he finds is not in bona fide cases of lands where permanent settlement is not in existence, but in cases of resumption, and particularly in cases of escheat and forfeiture. I may tell him that legislation as suggested by him would, in many cases, do more harm than good to the persons whom he wishes to protect. I may point out to him that since 1793 there have been no cases of escheat or forfeiture for political opinions. Let us assume that there may be such a case, let us assume that a détenu's property has been forfeited. It may amount to 25 bighas or 50 bighas. What has the Government to gain by having a special legislation prohibiting Government from assessing land revenue and fixing the rent for an area which probably covers many hundreds of square miles for the benefit of a man possessing 20 or 50 bighas? They certainly will be the first to blame Government when the day comes for increasing the revenue from the temporarily-settled areas. They will blame Government for having cut down all possible sources of progressive revenue for the sake of a man, who happened to have certain political opinions. It would affect anybody and everybody and would cover a large area. In the 24-Parganas I have come across only one case in which a rent-free tenure should have been escheated to Government. Government decided to take no action.

I would now deal with the cases mentioned by the mover. I may say at once that they are not sufficient to justify Government limiting its rights in certain areas. Secondly, the mover has found great difficulty in the amalgamation of two sections, and particularly found a difficulty in the fact that contracts entered ino before the passing of the Act of 1885 are brought under the conrol of the Revenue Officers for whom he entertains great suspicion. It is a most extraordinary thing to have such suspicion for one who studies the situation as very few else do. You go to a doctor when you want an expert opinion on your health, you go to a lawyer when you want an expert legal opinion, but in cases of land disputes we are asked to go to the Civil Court who are expected to judge intricate questions of titles. It is neither consistent, nor logical. The revenue history of the province has been developed by Revenue Officers as it was not developed before the establishment of the present rule. I think I should emphasise my objection to the hon'ble member's opposition to

the Revenue Officers. There may be cases where Revenue Officers may give a wrong decision. There is no officer of Government who is infallible or can claim infallibility. If he takes a case to the Civil Court, I may point out to him that it is more open to correction than even the Revenue Officers. The number of appeals filed against the revenue proceedings are few compared with the multitudinous proceedings in the Civil Court. He would simply fill the pockets of pleaders and their satelites, and in Court-fees and other things would provide more Government revenue than he is willing to pay under the present Bill. At any rate in the Revenue Courts all points raised are given equal consideration to that which is given in the Civil Court.

The question of contract entered into before the passing of the Act of 1885 is a point which requires consideration. The hon'ble mover cited two judgments—one of the Privy Council which, I am afraid, I do not know of, and the other, a case between Prodyot Kumar Tagore *vs.* Tweedie. This case was one which concerned an area which would very rarely be affected by the provisions of this Act. But even then, with due respect to the Hon'ble Judges, I would point out that it was the judgment of a single Bench and not the judgment of a Full Bench. Apart from that, it does not touch the question as affecting the general law. Most of the estates in which Government would use this section are estates either situated in the Sunderbans under cetrain definite leases or estates settled for the first time. The case I mentioned first is a case which provides a good example. Where a lessee of the Sunderbans holds land from Government under certain conditions, the question of law as applied by section 191 of the new Bill would have certainly a very far-reaching effect. But at the same time the general law of the land is equally as important, inasmuch as the lessee is bound by a period which may be 99 years or 30 years, and the general law of interpretation will hold good, inasmuch as no lessee can create an interest beyond the terms of his lease, that is, he cannot bind himself or Government or anybody to anything which comes into effect after the expiry of his lease. It is a well-known principle that no one can grant a greater right than he possesses himself.

Another point raised by the mover is the question of resumption. I do not know exactly what point he meant to deal with in connection with cases of resumption. Legislation in a revenue sense would arise only in two cases—either the resumption of land under Act IX of 1897, or resumption for failure to carry out conditions of certain leaseholds under Government. The two cases fall into entirely different classes.

3-45 p.m.

The two classes fall into entirely different categories. The resumption of a lease for Government revenue is the inherent right of Government, and it has been laid down consistently throughout the Regulaitons and dealt with specifically in Regulation II of 1819 and in Regulation IX of 1847, namely, that land has never been assessed to revenue by Government and any rights acquired are held liable to assessment to Government revenue, of course subject to the right that the land which accreted will belong to the estate or tenure adjoining. Government are only concerned with assessing revenue, and it is only fair and just, while assessing a revenue on a property, that Government should see that the property yields a fair and equitable profit for the tenure under them.

Secondly the resumption of the lease for violation to carry out the conditions: If that lease is resumed, whatever rights the under-tenure-holders had under the old lessee must automatically cease to exist on the basis of the settlement made. I may remind you, Sir, that no man has any right to grant a greater right than he himself has, and he has no power to bind Government to enter into a contract which he himself cannot carry out. Alternately, they have both failed to carry out the contract. Government in cases of resumption of this nature always took steps if they considered necessary to void these tenures through the Civil Court. Revenue Officers per se have no power to void a tenure.

With this statement of the case, I think I have dealt with most of the points raised by the mover, but before I close I would point out that this section deals wholly with mala fide transactions. Where the transactions are bona fide, no difficulty arises, but there are cases which have come to my notice constantly in which temporarily-settled estates have been settled not temporarily but permanently. There have been unscrupulous people who have dealt with the raiyats in a manner which is little short of criminal. For 5, 4 or 3 years before Government resettled the land, these people accepted salami for granting maurashi mukarari leases. Therefore, these leases are not binding on Government, and these leases have been granted in some cases for 50, 20 or 5 rupees per bigha. Is it fair that Government who have never been a party to these transactions, who have not taken even a chouth of the salami paid to a landlord, should be bound by the actions of these people to the detriment of the public revenue? With these words, I oppose the amendment.

Babu JOGINDRA CHANDRA CHAKRAVARTI: I have listened with great attention to Mr. Burge, but I find that he has not given any answer so far as amendment No. 1324 is concerned. We have before us two amendments practically, that is to say, amendment

No. 1318, which says that for the words "whether before or passing of this Act" the words and figures "after passing of the Bengal Tenancy Act, 1885" be substituted. There is another amendment, that for these words "whether before or after passing of this Act," the words "after the date of any settlement of land revenue which the Government had first made of the estate" be substituted. I quite agree with the proposition which has beeu enunciated by Mr. Burge, that no man has any right to make any contract in excess of his own right. That is perfectly true, and when we come to consider the case of any contract which was made by any lessee of the Government in excess of his own rights, I think it is perfectly justifiable for Government to say that this contract is absolutely of no value, because this contract is in excess of the rights which the lessee has. But in cases where the contracts were made before the date of any settlement of land revenue which the Government had first made of the estate, this argument does not apply and, therefore, it is proposed to substitute these words, namely, "after the date of any settlement of land revenue which the Government had first made of the estate" for the words "whether before or after passing of this Act." The section will stand thus: "Nothing in this Act or in any lease or contract made after the date of any settlement of land revenue which the Government had first made of the estate shall entitle any tenant to hold his tenure free of rent, etc." What I beg to submit is this: Even if there be some force in what Mr. Burge says with regard to the words "after the passing of the Bengal Tenancy Act," his argument cannot apply to those cases where this section applies to contracts which were made before any settlement of land revenue was made and for this reason, that when a land revenue is settled it is never settled without fully knowing all the existing circumstances. So it is only just and fair that the rights of any person who might have entered into a contract with the lessor should be protected, and Government having all these facts before them and knowing all the facts, whether those are contracts or not regarding any tenancy free of rent, can make their settlement accordingly. I submit, therefore, that of these amendments the second amendment which I have just mentioned and regarding which Mr. Burge has not a word to say is certainly one which should be accepted.

Khan Bahadur MUHAMMAD ADBUL MUMIN: I do not propose to go over the grounds which my friend Mr. Burge has already dealt with. I only want to reply to the question put by my friend Babu Jogindra Chandra Chakravarti. He wants to substitute the words "after the date of any settlement of land revenue which the Government had first made of the estate" for the words "whether before or after the passing of this Act." He thinks that this insertion will meet all the cases. I want to bring to his notice the cases of diara resumption

where, if you substitute these words, they will act adversely to Government interest. For instance, supposing a particular area which is now being enjoyed as part of a temporarily-settled estate and during that enjoyment the landlord has made certain contracts with a tenure-holder giving a permanent right to him on a small rent and it is subsequently found that this is really a land which is not included in a permanently-settled estate and is assessable to revenue under the diara Regulations: In that case, if we have this, then Government will not be able to resume this land, annulling the contract which was made between the tenure-holder and the landlord before the Bill came into operation, and that will affect Government land revenue. I ask Babu Jogindra Chandra Chakravarti if this will not be the case as I have explained.

The Hon'ble Sir PROVASH CHUNDER MITTER: I only desired to say a few words about the broad aspect of the question, that a man has no right to transfer an interest which he does not possess. My friend Babu Jogindra Chandra Chakravarti has agreed with this argument of Mr. Burge's. Therefore, I need not dilate much upon that, although a good portion of this amending section is really based on that principle. With regard to amendments Nos. 1313-27, the movers of the amendments want that for the words "whether before or after the passing of this Act" the words "after the date of any settlement of land revenue which the Government have first made of the estate" be substituted. I ask the House to analyse what it really means. It means this: If it is a temporarily-settled estate then these words are meaningless. These words cannot mean anything, because at the time when the original contract was made at that time the persons who made that contract were subject to the limitation of the period of that previous settlement. If it is a question of an estate being resumed by Government, even then these words will be of little assistance, because Government can only resume because of its statutory power. Even then, the previous contract was entered into at a time when it was subject to limitation of period. These were the broad aspects of the question. No point really arises about the provisions of the Act of 1847 or of Regulation VII of 1822. On the broad aspects of the question this amendment ought not to be accepted, and even if accepted it will be of little assistance to the object the mover has in view.

The first motion of Srijut Nagendra Nath Sen was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ahamad, Maulvi Asimuddin.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjea, Dr. Pramathanath.
Banerjee, Babu Premetha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Biswas, Babu Surendra Nath.

Bose, Babu Bejay Krishna.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Laia, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Moitra, Srijut Jogendra Nath.
Mukherjea, Srijut Taraknath.
Nasker, Babu Hem Chandra.
Pal Choudhuri, Mr. Ranjit.
Rahman, Maulvi Shamsur-Rahman, Mr. A. F.
Rahman, Mr. A. F. M. Abdur-Raikat, Mr. Prasanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Roy, Dr. Bidhan Chandra.
Ray, Mr. Bijay Prasad Singh.
Roy, Mr. D. N.
Ray, Mr. Kiran Sankar.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Dash, Mr. A. J.
Fyfe, Mr. J. H.
Ghose, Mr. M. C.
Gupta, Rai Bahadur Mahendra Nath.
Huque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
James, Mr. P. E.
Kasem, Maulvi Abul.
Marr, the Hon'ble Mr. A.
Mitter, the Hon'ble Sir Provash Chunder.
Momin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Parratt, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Ray, Babu Nagendra Narayan.
Reid, Mr. R. N.
Sashse, Mr. F. A.
Sarker, Rai Sahib Rabati Mohan.
Stapleton, Mr. H. E.

The Ayes being 45 and the Noes 29, the following motion was carried:—

"That in clause 124, in proposed section 191, in line 12, for the words 'whether before or after passing of this Act' the words and figures 'after the passing of the Bengal Tenancy Act, 1885' be substituted."

The following motions were then put and lost:—

"That in clause 124, in line 12, for the words 'whether before or after the passing of this Act' the words 'after the date of any settlement of land revenue which the Government had first made of the estate' be substituted."

"That in clause 124, after proposed section 191, the following further proviso be added, namely:—

'Provided also that the provisions of this section shall not affect any judgment already passed or affect any decision of any case pending before a Civil or Revenue Court.'"

Khan Bahadur Maulvi EKRAMUL HUQ: I beg to move that in clause 125, at the end of the proposed proviso, the words "or in exercise of the rights of a free citizen" be added.

I am not the only person who has broken the peace.....

Srijut NAGENDRA NATH SEN: On a point of order. Motions Nos. 1333 and 1339 do not deal with the same thing; No. 1333 deals with the final judgment passed by a Revenue Court.

Mr. PRESIDENT: What do you mean? Are you speaking on No. 1333? Number 1333 has been lost.

Khan Bahadur Maulvi EKRAMUL HUQ: ..... and tranquillity of the House to-day. I trust I am in good company and shall be excused in moving the amendment that stands in my name.

Sir, the world movement is towards liberty—more and more liberty—not only for the people in general, but also for the individual in particular. Even countries conservative to the core have startled the world by their actions in this direction. It is only with a view to getting a clear verdict of the House on the need for the recognition of individual freedom to act in whatever manner he pleases that I have tabled this amendment for the consideration of this House. There may be some members in this Council who think that as the law stands individual liberty is not curtailed and a tenant can do whatever he likes on his holding; there may be others, on the other hand, who think that no loophole should be kept in the law which may be used as an instrument for the curtailment of individual liberty. This being the case, to my mind it is absolutely necessary to insert clauses in this Bill which should explicitly and clearly recognise the right of a person to act in the way he pleases. It is an admitted fact that everyone has the right to act in whatever way he likes, provided that his actions do not clash with the similar rights of other persons. This being the case, I think we should stipulate that even under the Bengal Tenancy Act there should be nothing to indicate in the least that any individual is debarred from exercising his right in the way he thinks proper. Section 194 of the Act as it stands runs thus: "Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition."

As the law stands, the landlord may think of curtailing the liberty of action of individuals. There may be a condition attached to an estate or tenure that such and such act should not be done on the land.

within the estate or tenure. For instance, there may be stipulation in a deed by a Muhammadan that persons under his estate or tenure will not be permitted to blow conch shell or be entitled to make jhalka sacrifice of buffaloes or goats before their gods and goddesses. Do you for a moment think that any person having any idea of liberty would allow such a stipulation to stand on the statute book? I think not. It should be the duty of every legislator to see to it that the matter is fully cleared up. I have practical experience of the matter. I had a neighbour who was also my tenant and who was very fond of black goats—you know what it means. Many Muhammadan neighbours came and told me that the man should not be allowed to go against the wishes of his neighbours and he should be stopped from killing the animals. I could not compel him to do any such thing, for I had no right to interfere with his right of individual liberty. There might be Hindu zamindars who may think of not allowing their Muhammadan tenants to make their annual sacrifices or to kill cows for food and if there be a stipulation going with an estate or tenure that such act will not be allowed then a zamindar may enforce that condition, with the result that there will be trouble between the landlord and the tenants which might result in law suits and may end in the breach of peace and tranquillity. Is it a state of affairs which should be permitted to continue? Certainly not. We should make the law clear and explicit, so as not to keep any loophole whatever to enable a person to restrict the liberty of his tenant. If my amendment is passed, it will produce another very good effect in the country. I am not appealing to the members of Government, and particularly to the Indian members thereof. I know what idea of liberty they have, but I am appealing in particular to the Swarajists and to the zamindar party in this House. It is for them to say whether we should not have such a provision on the statute book. Our countrymen, be they Hindus or Muhammadans, will think that individual liberty is not only recognised in the law book, but is so recognised by every individual member of the House who happens to be their representative in this Council. This will widen their outlook and will teach them that in no case should a man fly at the throat of another person when he exercises his right as a free citizen without curtailing the rights of others. This will make us more liberal in judging the actions of others who do not belong to our own community. That being the case, I think the House will consider whether it should be ready to accept my proposal which, if accepted, will make it impossible for any individual to curtail or make attempt at curtailing the liberty of a free citizen, provided that it does not clash with the liberty of others.

Khan Bahadur MUHAMMAD ABDUL MUMIN: If a propsal like this had come from anybody else, perhaps the House would have been surprised; but by this time we have learnt not to be surprised

at anything which comes from that quarter of the House. Although I shall not be relevant as regards the amendment, I am very much tempted to relate a story which will be relevant certainly to the speech of the mover in the House. It reminded me, when he was speaking, of an old woman who, when she was listening to the sermon of a mollah, was so affected that she was weeping all the time the mollah was delivering his sermon. The mollah thought that this woman was perhaps the most intelligent of his audience, and he went over to her and asked her what she really understood. She said that she did not understand what his sermon contained, but the mollah's appearance, the way he talked and his black beard reminded her of a black goat which the old woman had, but which had been taken away by a jackal.

4-15 p.m.

When my friend Khan Bahadur Ekramul Huq was speaking, I thought that all the time he was thinking of the black goat of his tenant. (Laughter. A VOICE: A valuable story indeed.) Coming to to the amendment itself, Sir, it is a very simple matter. I am afraid my friend, Khan Bahadur Ekramul Huq has absolutely confused the rights in land with the rights of citizenship. He thinks that if a tenure-holder enters into a sort of contract with his proprietor, he would not be able to do anything even if such contract has nothing to do with his land. He thinks, for instance, that if the tenure-holder happens to have a contract, that nobody living on the tenure should wear khaddar, or that nobody should be allowed to marry more than once (A VOICE: Or wear black caps), the contract should be effective. I submit that this sort of contract is not contemplated in this section. All the conditions which are mentioned in this section must be conditions and restrictions about the use of land; they do not refer to civic rights at all. Therefore, Khan Bahadur Ekramul Huq's apprehensions are absolutely baseless. Whatever doubts were there as regards the power of a raiyat or an under-raiyat, with regard to his rights about the use of his land, have been set at rest by the proviso which has been added to this section. With these words, Sir, I oppose the motion.

Khan Bahadur Maulvi EKRAMUL HUQ: On a point of information, Sir. Is the Hon'ble member not aware that there are places in this province where individual liberty has been restricted?

Khan Bahadur MUHAMMAD ABDUL MUMIN: That is not governed by this section at all.

Dr. PRAMATHANATH BANERJEA: Sir, I have the fullest sympathy with Khan Bahadur Ekramul Huq in regard to the amendment which he has moved. But may I inquire of him as to what are the rights of free citizenship? I take it that they are free speech, free association, and free movement. I want these rights to be secured not to the raiyats and under-raiyats alone, but to the whole country—(Hear, hear)—to the landlord and the capitalist, to the labourer and the agriculturist. If Khan Bahadur Ekramul Huq is prepared to support me (KHAN BAHADUR EKRAMUL HUQ: Oh, yes), let us introduce a proper Bill for that purpose. It is no use trying to hamper this Bill with tinkering amendments of this nature.

Mr. JOGESH CHANDRA GUPTA: On a point of information, Sir. May I ask Khan Bahadur Ekramul Huq—especially after the indication given by Dr. Pramathanath Banerjea of an impending Bill—as to what are the rights of a free citizen in his opinion in India?

The motion of Khan Bahadur Maulvi Ekramul Huq, was then put and lost.

Mr. W. H. NELSON: Sir, with your permission I wish to move a short-notice amendment, viz., that clause 133 be omitted.

Sir, clause 133 proposes a change which was rendered necessary by sub-clause (*i*) to clause 30 of the Bill. As clause 30 of the Bill has been omitted, the change becomes unnecessary in the schedule.

Mr. W. H. NELSON: I wish to move with your permission a further amendment, standing in the name of Babu Amarendra Nath Ghose, viz., that clause 134 of the Bill be omitted for the same reason.

The motion that clause 133 of the Bill be omitted was then put and agreed to.

The motion that clause 134 of the Bill be omitted was then put and agreed to.

The following amendments were called but not moved:—

Khan Bahadur Maulvi AZIZUL HAQUE to move that in clause 134, in proposed item 1 (*b*), for the wrods "one year" the words "three month" be substituted.

Babu NAGENDRA NARAYAN RAY to move that after clause 135 the following be inserted, namely:—

"135A. To Article 3 in Part I of Schedule III to the said Act the following shall be added:—

'In case of occupancy raiyats attaining majority	Twelve years	The date of actual dispossession.
In the case of minors.	Twelve years	The date of attaining majority and actual dispossession whichever occurs later.'

in the first, second and third columns, respectively."

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, with regard to the amendments which were left over, may I make a suggestion for the consideration of the House? I suggest that amendments Nos. 264 to 269, which deal with the date from which section 26 will come into operation, may be taken up first.

Then, Sir, I suggest that amendments dealing with waqf, dedication, and heba, viz., Nos. 557 to 559, 549 (*i*) and (*ii*), 548 and 734, should be taken up next.

Next in order should come up the question of pre-emption arising on amendment No. 709. After that should come the question of lease, viz., amendments Nos. 280, 444, 562 and 563, and 723 to 733, with which are also connected amendments Nos. 911 to 931.

Then should come the question as to whether the Act should be given a retrospective effect—amendments Nos. 284, 564 and 757 to 759.

Lastly comes the question of subdivision of tenancy amendments Nos. 346 and 561. These, I submit, have already been disposed of by the amendment of Mr. Naliniranjan Sarker, No. 1087, which was carried the other day.

Over and above these, there are two other amendments, viz., Nos. 761 and 762, which may be taken up at any stage, as they do not come under any broad head.

If this meets with your approval, Sir, we may now take up amendments Nos. 264 to 269.

Mr. PRESIDENT: Yes, I agree that this arrangement be followed.

Mr. F. E. JAMES: Sir, may I ask whether it should be possible to have copies of the numbers of amendments in the order enumerated by the Hon'ble Member in charge of the Bill, as many of us could not follow what the Hon'ble Member said.

Mr. PRESIDENT: Certainly, if the Secretary has got them ready. In any case, there will be no difficulty, as members are in possession of printed lists of amendments. For their convenience, I will call out both book and page numbers along with amendment numbers.

Khan Bahadur Maulvi EKRAMUL HUQ: Sir, I beg to move formally that in clause 23, the proposed section 26A shall be omitted.

The following amendments were called but not noved:—

Mr. A. K. FAZL-UL HUQ to move that in clause 23 for the letters, words and figures "26 B to 26 J" in the proposed section 26 A, the following be substituted, viz.,—

"26 B, 26 C and 26 C (2) to 26 J."

Babu MAHENDRA NATH MAITI to move that in clause 23, in the proposed section 26 A, the words "of occupancy raiyats" be omitted.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur, to move that in clause 23, in the proposed section 26A, line 6, for the words and figures "after the day of 19 ," the words "six years before the passing of this Act" shall be substituted.

Mr. W. H. NELSON: Sir, I beg to move that in clause 23, in the proposed section 26A, last line, for the words and figures "the day of 19 ," the words and figures "the 1st day of April, 1929," shall be substituted.

Sir, the effect of this amendment is that clause 23 of the Bill, which deals with transferability and pre-emption, shall come into force on the 1st day of April, 1929.

The following amendment was called but not moved:—

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 23, in the proposed section 26A, for the words and figures "after the day of 19 ," the words "after the passing of this Act" shall be substituted.

The motion of Khan Bahadur Maulvi Ekramul Huq was then put and lost.

The motion of Mr. W. H. Nelson was put and agreed to.

(On amendment No. 557 being called out, Khan Bahadur Maulvi Azizul Haque rose to speak.)

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, may I make a suggestion to Khan Bahadur Azizul Haque? I and my Muhammadan friends have discussed this question, and if my Muhammadan friends would allow me to move a short-notice amendment and if they are agreeable to that being accepted, I think much discussion could be saved. I hope, Sir, this course will be acceptable to you and to my Muhammadan friends.

Mr. PRESIDENT: Do you mean to say that if your suggestion is adopted, all these amendments will be withdrawn?

The Hon'ble Sir PROVASH CHUNDER MITTER: Yes.

Mr. PRESIDENT: In view of what you have said, I think the House will agree to this course being followed.

Khan Bahadur Maulvi AZIZUL HAQUE: Might we have a copy each of the amendment referred to by the Hon'ble Member?

The Hon'ble Sir PROVASH CHUNDER MITTER: I will let you have it within a short time.

Dr. BIDHAN CHANDRA ROY: In that case, Sir, may I suggest that we adjourn for prayer at 4-30 p.m., so that we may see the amendment in the mean time?

Mr. PRESIDENT: That is a very good idea, and as it is 4-30 p.m., I adjourn the Council for 10 minutes for prayer.

[The Council was then adjourned and it reassembled at 4-45 p.m.]

Mr. PRESIDENT: What is the position with regard to amendment No. 557 and the other amendments following it?

The Hon'ble Sir PROVASH CHUNDER MITTER: I handed over copies of my revised amendment to the members before the adjournment. I also handed over a copy to the Legislative Department, and I think you, Sir, have it. My revised amendment reads thus:—

In clause 23 the second proviso to sub-section 26D (*e*) be omitted and the following proviso be substituted in its place:—

"Provided also that the landlord's transfer fee shall not be payable in the case of—

(*i*) a transfer by bequest or gift (including heba) in favour of the husband or wife of the testator or donor or of any relation by consanguinity within three degrees of such testator or donor;

(*ii*) a wakf in accordance with the provisions of the Muhammadan law which provides amongst other purposes for the purpose of the maintenance of the donor himself or the husband or wife of the donor or any relation by consanguinity within three degrees of the donor; or

(*iii*) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual:

Provided, nevertheless, that any wakf which includes amongst its object any provision for the maintenance of any person who is not one of the following, namely, the donor himself or the husband or wife of the donor or a relation by consanguinity within three degrees of the donor shall be liable to the payment of landlord's transfer-fee as provided in section 26D of the Act.

Explanation.—The expression 'heba' shall not include heba bil ewaz for any pecuniary consideration."

That was in the copy which I have handed over. Since then some of the Muhammadan members have asked me to add the words "for any pecuniary consideration." I have no objection to this. I will explain the position. In this clause in the Bill two points arise: One is the husband or wife of the testator or donor, or any relation by consanguinity within three degrees of such testator or donor; they will not have to pay any landlord's transfer fees. The next point is with regard to "dedication for religious or charitable purposes without any reservation for pecuniary benefit to the individual." They, too, will not have to pay landlord's transfer fees. As regards heba, that expression means gifts with or without any pecuniary consideration. As we know there are many cases where the consideration is nominal, but the consideration can also be a valuable pecuniary one, say, Rs. 500 or Rs. 5,000. In the explanation, we have made the position clear; the expression heba shall not include hebas for any pecuniary consideration. I hope the House will accept this short-notice amendment, because it is a matter which my Muhammadan friends have agreed to, and it does not affect any of the vital principles of the Bill.

Mr. PRESIDENT: Sir Provash, if I understand you aright, you mean to say that a settlement has been arrived at between Government and the Muhammadan members of the House, and the result of your amendment if it is carried, will be that amendments Nos. 557 to 734 will be washed away. Do you want me to put your amendment first?

The Hon'ble Sir PROVASH CHUNDER MITTER: Their attitude will, I think, depend upon whether the House will accept my amendment or not. From the assurance given by some of my Muhammadan friends, I believe that they would stand by it and accept this amendment if the other sections of the House accept this amendment gracefully.

Mr. PRESIDENT: In view of the assurance which the Hon'ble Member in charge of the Bill has got from some Moslem Members, I think I will be perfectly justified in putting his amendment first.

The motion of the Hon'ble Sir Provash Chunder Mitter was then put and agreed to.

The Hon'ble Sir PROVASH CHUNDER MITTER: With your permission, Sir, I should like to say something about amendment No. 709 which has already been moved by Khan Bahadur Maulvi Azizul Haque. I am prepared to accept that amendment.

Khan Bahadur Maulvi AZIZUL HAQUE: I understand that the Legislative Department propose to revise the language of the amendment.

The Hon'ble Sir PROVASH CHUNDER MITTER: Though I do not know anything about that yet, I am prepared to accept the amendment as it stands. I daresay if the Legislative Department revise the language at all, they will not make any substantial change in it. Still, as my Muhammadan friends wanted this clause, I have no objection to accepting this amendment.

Khan Bahadur Maulvi EKRAMUL HUQ: I would like to know from the Hon'ble Member how the law of pre-emption would stand in relation to small tenancy holdings.

The Hon'ble Sir PROVASH CHUNDER MITTER: The position is this. I have discussed with my Muhammadan friends the legal position with regard to the right of pre-emption in Bengal. It has been laid down by the High Court that the law of pre-emption can apply in Bengal if the vendor, purchaser, and pre-emptor are all Muhammadans. Therefore, the right of pre-emption cannot be exercised if any of the parties be a non-Muhammadan. As between Muhammadans the right can be exercised twice, once when the

original vendor, the occupancy raiyat, sells it to somebody and that somebody is a Muhammadan. After that sale the landlord can step in and ask for a re-conveyance on payment of 10 per cent. The advantage which the pre-emptor gets is that he will get this 10 per cent., but if the landlord purchases on payment of 10 per cent., and if the landlord be a Muhammadan and the other conditions are fulfilled, then the pre-emptor has has another right of pre-emption. He can get back the holding from the landlord, but then the landlord, the purchaser, and everybody must be Muhammadans. But after this purchase, the landlord will again get the right to purchase on payment of 10 per cent., and so the cycle goes on, if the parties be Muhammadans. I have made it quite clear to my Muhammadan friends that this amendment is of little use to them, but as they want it, I am quite prepared to accept it.

The following motion was then put and agreed to:—

"That in clause 23, after the proposed section 26F (7), the following be added, namely: '(8) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.'"

The Hon'ble Sir PROVASH CHUNDER MITTER: The next amendments which I suggest may be taken up are those contained in Group D, viz., Nos. 280, 444, 562 and 563, 723 to 733, with which are connected 911 to 931. Now, with regard to these, subject to what you think, Sir, and the members of the House have to say, I think discussion will be very much shortened if we take up amendments Nos. 911 to 931 first. If the House agrees to this, and if we can come to a decision on them, then many of the other amendments may not have to be discussed at all. These amendments are in Part III, and they arise in connection with section 48H. They will be found on pages 20 to 24 of Part III. Of all these, the most important are Nos. 919 and 920 and 931. If we can come to decision on these amendments, then very probably the other amendments will not be discussed. Here, too, just as I tried to come to an arrangement with the Muhammadan members of the Council, I tried to come to an arrangement with the Swarajist and landlord members of the Council, and I handed over a draft to them. If they have no objection, I may show the draft to the other members who have not seen it. If the House accepts this, I am prepared to accept the amendment.

Mr. PRESIDENT: What about Nos. 444 and 727?

The Hon'ble Sir PROVASH CHUNDER MITTER: These may be taken up later.

Mr. PRESIDENT: Jogindra Babu, could you tell me whether I was correctly informed by a member of your party that you want to discuss Nos. 444 and 727 before taking up Nos. 920 and 921?

Babu JOGINDRA CHANDRA CHAKRAVARTI: Yes, Sir.

Mr. PRESIDENT: Sir Provash is suggesting to take up Nos. 911 to 931 first.

The Hon'ble Sir PROVASH CHUNDER MITTER: I was informed by a member of that party that they will not have any objection to taking up these amendments.

Mr. PRESIDENT: But probably your intention was to take up Group D first.

The Hon'ble Sir PROVASH CHUNDER MITTER: Yes, Sir.

Mr. PRESIDENT: Then I take it that there is no objection if we take up Group D first and then come to amendments Nos. 911 to 931.

The following amendments were called but not moved:—

Rai HARENDRANATH CHAUDHURI to move that in clause 23, in the proposed section 26D, after clause (*b*), the following be added:—

"(*bb*) In the case of a lease for a term exceeding fifteen years of a holding or a portion or share of a holding to twenty-five per cent. of the salami set forth in the instrument of transfer or to six times the annual rent secured by the lease, whichever is greater."

Mr. SATYENDRA CHANDRA GHOSH MAULIK to move that in clause 23, after the proposed section 26D (*e*), the following shall be added, namely:—

(*f*) in the case of a transfer by lease for upwards of fifteen years of a holding or portion or share of a holding to 20 per cent. of the value thereof as set forth in the instrument or to four times the annual rent of the holding or of the portion or share transferred, whichever is greater."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, to move that in clause 23, after the proposed section 26D (*e*), the following sub-section shall be added, namely:—

"(*f*) in the case of a transfer by lease, for upwards of 12 years, of a holding or a portion or share of a holding to thirty per cent. of the value thereof as set forth in the instrument or to eight times the annual rent of the holding or of the portion or share transferred, whichever is greater."

Mr. BIJOY PRASAD SINGH ROY, Srijut NAGENDRA NATH SEN, Maulvi SHAMSUR-RAHMAN, and Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 23, in clause (*ii*) of sub-section (*2*) of the proposed section 26I, the words "lease or" shall be omitted.

Rai HARENDRANATH CHAUDHURI, Mr. SATYENDRA CHANDRA GHOSH MAULIK, Babu AKHIL CHANDRA DATTA and Mr. JOGESH CHANDRA GUPTA to move that in clause 23, proposed section 26I, sub-section (*2*), sub-clause (*ii*), in line 4, for the word "lease" the words "lease for a term not exceeding fifteen years" be substituted.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, to move that in clause 23, in the proposed section 26I (*2*) (*ii*), after the word "lease," the words "for a period not exceeding twelve years" shall be inserted.

Srijut JOGENDRA NATH MOITRA and Srijut TARAKNATH MUKERJEA to move that in Bill, clause 23, in proposed section 26I (*2*) (*ii*), for the word "lease," the words "lease for a term not exceeding nine years" shall be substituted.

Maulvi TAMIZUDDIN KHAN: I beg to move that in clause 32, proposed section 48H be omitted.

Sir, this proposed section 48H prescribes a fee which is to be given to the landlord in case of a sub-lease by a raiyat. It seems to be Sir, in the fitness of things that just towards the close of this legislation there should come up for discussion one of the most obnoxious clauses of the Bill. This will put the finishing touch to the raiyats' picture of woe. It seems to be a fitting sequal to the melancholy drama which we have been witnessing ever since the introduction of this Bill in this House. By this section it is proposed to give to the landlord a privilege which he never possessed before—a privilege

which is unjust and unjustifiable. Under the present law, the landlord gets nothing whatsoever when his raiyat sub-lets his holding to an under-raiyat, but here you are proposing that even in the case of a sub-lease the landlord is to get as much as 25 per cent. of the salami which the raiyat will get. It will, perhaps, be said that under the present law the raiyat cannot sub-let his holding for more than 9 years. That is true. Under this amending Act, the raiyat will be able to sub-let his holding for more than 9 years, or permanently, or for any indefinite period. It may be all that, but I ask—Does that at all adversely affect the position of the landlord? To my mind the landlord will be in the same position as he is under the present law, because the House has already decided that the interest of an under-raiyat will not be a protected interest. Therefore, when the holding of a raiyat is sold for arrears of rent, then the landlord will be the purchaser of the holding at that sale and will be in a position to evict the under-raiyat who may be on the land. Therefore, the landlord will be in the same position as he is at present under the present law. In this view, Sir, there seems to be no justification for the introduction of this clause in the Bill, viz., that even in the case of a sub-lease the landlord is to get a substantial fee on salami. Then, Sir, it may be argued by the landlords and their advocates that unless there is such a provision in the Act, raiyats will resort to the subterfuge of sub-letting and thus deprive the landlord of his transfer fee.

5-15 p.m.

Sir, without entering into the merits of the question, may I ask whether the raiyats, after paying the pre-emption and premium, should have the right to have recourse to the device of sub-leasing tenancy? It is something for the raiyat to fall back upon when he is at bay. Unless there is this outlet, it is horrible to think of the consequences. It may affect not only him and the landlord, but also other people inhabiting this land. You have created the mischievous institutions of pre-emption and premium, and now you propose to sacrifice the right of the raiyat to sub-lease his tenancy. You have already sacrificed his right of sale and transfer. And you are now trying to deprive him of his right of lease. Let us see what is the position of landlords in respect of sale and sub-lease. In the case of sale, the landlord is bound to recognise it if he is paid a premium, but in the case of sub-lease the landlord is not bound to recognise it. There may be some justification for the landlord to receive some transfer fees in the case of sales, but there is no justification in the case of sub-leases to under-raiyats. I do not know what reason can there be for the landlord to claim a portion of the salami in cases of sub-lease. Sir, I do not want to lengthen my arguments. I know

what the result will be. The major party is there, and in their strength they look down upon us with contempt. They will succeed now, but let them beware when the tenants will come into power.

Babu NALINIRANJAN SARKER: Sir, with your permission, I may be allowed to move my amendment in a modified form.

Mr. PRESIDENT: I have got a copy of it. When the member asked for my permission, I said that I would give my consent if he circulated beforehand a copy of his amendment to each of the different groups in the House.

The Hon'ble Sir PROVASH CHUNDER MITTER: I may explain our position at once. We must oppose the amendment. Whether the mover is allowed to move his amendment, that is a matter entirely for you.

Mr. PRESIDENT: I agreed to allow Mr. Sarker to move his amendment, and I understand he has circulated copies of it to all the different parties in the House.

Mr. F. E. JAMES: On behalf of my group, I object to the amendment being moved at this stage.

Mr. PRESIDENT: The position is this. In cases of amendments. when a member wants to move one on short notice, it is entirely in the discretion of the Chair whether to allow it or not.

Mr. F. E. JAMES: May I submit one point for your consideration? It is that when I sought your permission to move my amendment on short notice, you said that it was in your discretion, but that your use of that discretion would be largely guided by the members who were willing to have an amendment on short-notice discussed. On ascertaining that certain members were not willing to have it discussed, you did not think of using your discretion.

Mr. PRESIDENT: You have not correctly stated the position. Besides, in respect of an amendment to a resolution, if there is any objection from the House, the objection will prevail, unless the President intervenes and allows the motion to be moved. But in the case of an amendment of this nature, the discretion of the President is the only thing that counts. It does not matter whether anyone objects to it or not. Then, again, you should not forget that with a view not to stifle discussion, which is particularly helpful in all matters of legislation, I have given all possible facilities to members of all parties in the House to move amendments on short notice, whenever I found them admissible.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of information, Sir. I think Mr. James wanted to move his amendment at short notice, but as it was objected to by certain prominent members, you did not allow it. In this case, the Muhammadan and the European groups object to the moving of Mr. Sarker's amendment on short notice. So, under the circumstances, it cannot be brought before the House.

Mr. PRESIDENT: I think you are mistaken. Mr. James found that his amendment was not acceptable to certain important groups of the House, and as no compromise could be reached, Mr. James did not care to move his amendment. The question of the President's discretion did not arise, as Mr. James was very reasonable on that occasion and did not rise to move his amendment. The matter was decided in my private chamber. I was told that two very important groups were opposed to it. Similarly, Mr. Sarker would be very wise if he does not press his amendment. But so far as I am concerned, I have already given him my permission and cannot reasonably withdraw it.

Babu NALINIRANJAN SARKER: The principle of my amended version is the same as my original amendment. So I see no reason why I should not move it.

Mr. PRESIDENT: I have already given my permission and you may move it.

Mr. F. E. JAMES: I do not understand what the position of the Government actually is in regard to this matter.

The Hon'ble Sir PROVASH CHUNDER MITTER: We are opposed to the amendment. Our position generally is that we do not oppose the amendments on short notice, because we think it is not right for Government to rule out discussion.

Mr. PRESIDENT: It is not for the Government to rule out discussion. That entirely rests with the Chair.

Babu NALINIRANJAN SARKER: I beg to move that the following be substituted in place of section 48H in clause 32 of the Bill:—

"48H. (1) No lease to an under-raiyat for an indefinite period or for a term exceeding 12 years or for a lesser period with an option of renewal, which, if exercised, would make the total period exceed

12 years, shall be registered unless the value of the interest created by the lease is fully set forth in the instrument of lease and unless the document presented for registration is accompanied by—

(*i*) a notice giving particulars of the lease in the prescribed form;

(*ii*) the process-fee prescribed for the service of such notice on the landlord or his common agent, if any; and

(*iii*) a landlord's fee of an amount equal to 20 per cent. of the value of the interest created by the lease, or 5 times the annual rent secured by the lease, whichever is greater, for transmission to the immediate landlord of the raiyat-lessor.

Provided that if the landlord considers that the value of the interest created by the lease is understated in the instrument of lease, he shall be entitled to have the proper value determined by a competent Court on application made to it within 6 months from the date of notice, and if the value so determined be in excess of the value stated in the instrument of lease, the landlord shall be entitled to recover from the lessees such further sum by way of landlord's fees and costs as may be awarded to him by the said Court on the basis of such excess value.

Explanation.—A lease may include either a patta executed by the lessor, or a kabuliyat executed by the lessee, but where the landlord's fee has been paid for the patta, it shall not be again payable for the kabuliyat or vice versa.

(2) The manner of transmission of the landlord's fee to the immediate landlord shall, so far as possible, be that provided in section 26C.

(3) The acceptance of the landlord's fee provided in sub-section (*1*) shall not operate as an admission of the amount of rent, or the area, or any incident of the raiyati or under-raiyati holding created by the lease, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof."

Sir, my object in moving this amendment is to secure for the landlord some protection against practical transfer in the form of a long lease. The whole scheme of transfer is based on the fact that the landlord should get on each transfer a transfer fee of 20 per cent. or a right of pre-emption, but in the case of a lease for 12 years or more, which is practically a transfer so far as the lessor's right is concerned, some portion of the salami ought to be paid to the landlord, however limited it may be. So far as the procedure involved is concerned, I think the suggestions made in the amendment will speak for themselves, and I need not waste the time of the Council in emphasising them.

The following amendment was called but not moved:—

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI, of Muktagacha, Mymensingh, to move that in clause 32, for the proposed section 48H (*1*), the following shall be substituted, namely:—

"48H (*1*) No lease to an under-raiyat for a period exceeding twelve years shall be registered unless a fee equal to 30 per cent. of the value of the holding to be set forth in the instrument of lease, or eight times the annual rent, whichever is greater, together with the prescribed cost of transmission is paid to the Registering Office for transmission to the immediate landlord of the raiyat."

5-30 p.m.

Mr. JOGESH CHANDRA GUPTA: In the absence of Rai Harendranath Chaudhuri I beg to move that in clause 32, for the proposed section 48H (*1*), the following be substituted:—

"48H (*1*) No lease to an under-raiyat for a term exceeding 12 years shall be registered unless a fee equal to one-fourth of the salami mentioned in the lease or six times the rent secured by the lease, whichever is greater, is paid to the Registering Officer, together with the prescribed cost of transmission for transmission to the immediate landlord of the raiyat."

In moving this amendment now before the House I submit that in the first instance we want that leases for a period exceeding 12 years should not be frequently resorted to instead of out-and-out sales. We have provided that in cases of sale a certain amount will be paid as landlord's fee, and we have further provided that an under-raiyat will have no further rights than is given by this amending Bill. We have passed motion No. 842 whereby it has been said that if an under-raiyat occupies a land for 12 years or has got a homestead on it, then he has acquired a right and cannot be evicted. Now, Sir, if we allow a lease for more than 12 years, people who want to avoid the payment of transfer fees will largely resort to the practice of granting under-raiyati leases for an indefinite or long period, and when the under-raiyat is in possession of 12 years or more, he will acquire rights as against the raiyat and the landlord also, and the whole scheme of the Act will be defeated thereby. So it is necessary that clause 48H must be made clear in two respects at least, so that it will leave no room for a mala fide lease which will enable the lessee to purchase the land to all intents and purposes and at the same time avoid payment of the transfer fee that has been passed by this House. In the second place, it is absolutely necessary that the under-raiyati lease should not exceed 12 years, so that a right may not be acquired

by the lessee as against the raiyat and the landlord. The term of 12 years is larger than the period for which under-letting was allowed by the existing law. Section 85 of the existing Bengal Tenancy Act has been repealed by this amending Bill. Under section 85, it was provided that no sub-letting for a period beyond 9 years was to be allowed. Now this section 85 has been repealed, and we and those of us who have not supported that motion for not deleting that section think that some safeguards should be provided in this Bill so that leases may not be frequently resorted to in place of transfer.

I, therefore, ask the support of the House to this amendment, and I hope Government also will see its way to accept this, because it does not go against the scheme of the Act, but, on the other hand, it aims only at safeguarding the scheme of the Act as has been passed by this House. (A VOICE: What is the scheme of the Act?) The scheme of the Act is that a transfer fee of 20 per cent. or 5 times the annual rental, will be paid, and the scheme of the Act further is that an under-raiyat will not acquire any rights as against the raiyat or against the landlord as provided under section 160. This amendment only gives effect to the intentions of the Act by providing that a lease for a term exceeding twelve years should not be allowed. But if a lease is given by a raiyat for twelve years, that will be considered as a bona fide lease,, and no salami or compensation will be payable to the landlord; 20 per cent., or 5 times the annual rental, will only be paid in cases of lease for a period exceeding 12 years.

I do not think I need say anything more. The object of my amendment is clear, and, at this late hour of the day, I need not take up the time of the Council any further.

The following amendments were called but not moved:—

Mr. BIJOY PRASAD SINGH ROY to move that in clause 32, for the proposed section 48H (*1*), the following be substituted, namely:—

"48H. (*1*) All leases to under-raiyats must be made by registered instrument, and no such leases shall be admitted to registration unless it states the amount of salami that has been or shall be actually paid, and unless a fee equal to 25 per cent. of such salami, together with the prescribed cost of transmission, is paid to the Registering Officer for transmission to the proprietor or permanent tenure-holder."

Srijut NAGENDRA NATH SEN and Maulvi SHAMSUR-RAHMAN to move that in clause 32, for the proposed section 48H (*1*), the following shall be substituted:—

"48H (*1*) In the case of a lease to an under-raiyat which contains a stipulation that a salami shall be paid, the under-raiyat shall be liable to pay to the immediate landlord of the raiyat a fee equal to one-fourth of the salami.

The provisions contained in Chapter V as regards "transfer fees" shall apply mutatis mutandis in the case of a lease by a raiyat."

Maulvi TAMIZUDDIN KHAN: I formally move that in clause 32, in the proposed section 48H (*1*), line 4, for the word "one-fourth," the words "three per cent." shall be substituted.

Maulvi NURUL HUQ CHAUDHURI: I formally move that in clause 32, in proposed section 48H (*1*), line 4, for the words "one-fourth," the words "two per cent." shall be substituted.

Maulvi TAMIZUDDIN KHAN: I have taken the permission of Maulvi Syed Nausher Ali to move the following amendment standing in his name and, with your permission, Sir, I would move it. I move formally that in clause 32, in the proposed section 48H (*1*), line 4, for the words "one-fourth," the words "one-twentieth" shall be substituted.

The following amendments were called but not moved:—

Rai SATYENDRA NATH ROY CHOUDHURI Bahadur to move that in clause 32, to the proposed section 48H (*1*) the following shall be added, namely:—

"But the acceptance of landlord's fees shall not in any way amount to a recognition of the under-raiyat's right by the immediate landlord and shall not be binding upon him."

Mr. E. T. McCLUSKIE to move that in clause 32, after the proposed section 48H (*1*), the following shall be inserted, namely:—

"Provided always that if at any time it is proved to the satisfaction of a Court that the salami actually paid exceeds the amount mentioned in the lease such lease shall be considered as void."

Maulvi ABDUL GOFRAN to move that in clause 32, after the proposed section 48H of the said Act, the following shall be added:—

"The immediate landlord of the holding of an occupancy raiyat in respect of which under-raiyati was created by receipt of salami may within two months from the date of receipt of fee as provided in sub-sections (*1*) and (*2*) of this section apply to the Court that the holding or portion or share thereof in respect of which such under-raiyati was created shall be transferred to himself.

The application shall be dismissed unless the immediate landlord of the occupancy holding at the time of making it or within such period as the Court may fix, deposits in Court the amount of the salami mentioned

in the lease together with compensation to be paid to the raiyat at the rate of twenty times the net annual profit reserved to the raiyat by the creation of the under-raiyati and all the provisions of sections 26F shall mutatis mutandis apply to such applications."

Babu SACHINDRA NARAYAN SANYAL to move that in clause 32, after the proposed section 48H, the following sub-section shall be added namely:—

"(3) In the case of a lease to an under-raiyat by an instrument in writing or otherwise which there is no stipulation for the payment of salami or in the case of a lease by a written instrument in which the salami is fraudulently understated the immediate landlord of the raiyat may within six months from the date of lease or within six months from the date of his knowledge, whichever is later, apply to the Civil Court for the fair and equitable assessment of the salami and may recover the same from the raiyat or under-raiyat as the Court may find. In determining fair and equitable salami the Court shall not decree more than twenty-five per cent. of the market value of the land demised."

Mr. JOGESH CHANDRA GUPTA: The following amendment stands in the name of Rai Harendranath Chaudhuri who is absent, but who has requested me to move it with your permission, Sir.

I move formally that in clause 32, at the end of the proposed section 48H, the following be added:—

"(3) The acceptance of landlord's transfer fee provided in sub-section (1) shall not operate as an admission of the amount of rent, or the arrear or any incident of the raiyat's or under-raiyat's holding or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof or be construed as a permission to create any right or interest protected under clause (j) of section 160."

I don't think I need make any speech.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh: I wish to move a short-notice amendment.....

Mr. PRESIDENT: Did you circulate it to the members?

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh: Yes.

Mr. PRESIDENT: Does anyone object and do you, Sir Provash, object to it?

Mr. J. H. FYFE: I object to it.

The Hon'ble Sir PROVASH CHUNDER MITTER: My attitude is this: I do not object to short-notice amendments. As regards the one which the Maharaja is going to move, I have no serious objection, but with regard to Babu Naliniranjan Sarker's motion we have serious objections.

Mr. PRESIDENT: Do I understand that you accept the Maharaja's amendment, Sir Provash?

The Hon'ble Sir PROVASH CHUNDER MITTER: If the House accepts.

Mr. PRESIDENT: In that case I permit the Maharaja Bahadur to move the motion.

Khan Bahadur Maulvi AZIZUL HAQUE: May I inquire what is the position of Government? Will they remain neutral and leave the voting to the non-official members of the House?

Mr. PRESIDENT: That question does not arise.

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh: I beg to move that the following be substituted in place of section 48H in clause 32 of the Bill:—

"48H (*i*) No lease to an under-raiyat for a term exceeding 12 years shall be registered unless a landlord's fee equal to 20 per cent. of the value of the leasehold created or 5 times the annual rent of the lessor, whichever is greater, together with the prescribed cost of transmission, a notice giving particulars of the lease in the prescribed form and prescribed process-fee for the service of such notice on the landlord or his common agent, if any, is paid to the Registration office.

Explanation.—(*1*) When the lease comprises a portion or a share of the lessor's holding the rent of that portion or share shall, for the purposes of determining the landlord's fee under this section, bear the same proportion to the rent of the entire holding as the area or share sub-let bears to that entire holding.

(*2*) A lease may include either a patta executed by the lessor or a kabuliyat executed by the lessee, but where the landlord's fee has been paid for the patta, it shall not be again payable for the kabuliyat and vice versa.

I. The manner of transmission of the landlord's fee to the immediate landlord shall, so far as possible, be that provided in section 26C.

II. The acceptance by the landlord of the landlord's fee provided in sub-section (i) shall not operate as an admission of the amount of rent or the area or any incident of the raiyat's or under-raiyat's holding, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent being payable in respect thereof."

Khan Bahadur Maulvi AZIZUL HAQUE: We have had many surprises in our life, but I think we are learning many surprises after coming to this Council. Our greatest surprise is that Government is so soon abandoning its own principles. So far as section 48H is concerned, the principle by which Government stood hitherto was to give a landlord a certain percentage of the salami, if such is payable at all. I think that is the present position of the Bill. My friend Babu Naliniranjan Sarker wants to introduce a new principle, namely, that the landlord should get a certain percentage of the value of the interest created by the lease. I have not yet heard that there can be any value of the interest. The Maharaja Bahadur of Mymensingh wants that that percentage should not be on the basis of the salami, but a percentage of the value of the lease. I want to put one question to both the hon'ble Maharaja of Mymensingh and the Hon'ble Revenue Member who is accepting the amendment, as to who will determine the value of the leasehold. Are you not opening a certain amount of complication in the tenancy legislation? The provision in section 48H is good enough, even though we object to it. The amendments of the Maharaja and Babu Naliniranjan Sarker differ only in degree—that of the former is of comparative degree and that of the latter of the superlative degree. We can understand that where a certain amount of salami is paid or is payable, a certain percentage should be paid to the landlord. Whether we justify it on the ground that it is a new introduction, or justify it on the ground that there is a practice here and there, or justify it on any other ground, I can appreciate it, but I cannot understand how for the first time in the tenancy legislation you are going to give a certain percentage of the value of the leasehold to landlords. Landlords have not done anything to improve the value of the leasehold. So far as the right of an under-raiyat is concerned, I submit that the superior landlord has nothing to do with it. The superior landlord is directly concerned with his tenant, and so long as his rent is secured, I do not think the landlord is affected in any way. I can understand the provision by which the interest of the landlord is safeguarded. We have heard of safeguarding the interest of the landlord against the malpractices

of tenants. My friends, Mr. Jogesh Chandra Gupta and Babu Naliniranjan Sarker, have never thought of the malpractices of the landlords—they are legion in Bengal. I ask them to find out in the Bengal Tenancy Act anything by which the malpractices committed by the landlords will be avoided. On the other hand, I find that it introduces a provision which provides that a portion or share of a holding shall also be liable to pay a certain amount. We object to the provision in the Bill itself, but still we can understand the principle on which it stands, and we are prepared to accept it on protest as it stands, but you are practically asking us now to consider an amendment which will nullify all that has been done.

I can understand the anxiety on the part of my friends, so that they might do a little more good to the landlords. Speaking on behalf of the tenants, we have not been able to see the justice and equity as to why the value of a leasehold should be assessed with a view to give a certain amount of premium to the landlord.

Sir, we have strong objection to this amendment, and I think this objection is valid on the ground that the copy has not been circulated to all the members. I raise this technical objection for what it is worth, but I think, Sir, that you, as the custodian of the privileges of this House, will not allow this amendment to be discussed till the members have got a full opportunity to know the pros and cons of this amendment, after getting a copy of it.

Maulvi NURUL HUQ CHAUDHURI: Sir, it is painful to have to hear from day to day that the tenants of Bengal are a set of dishonest people, who have got no sense of honour or honesty, and will stoop to any subterfuge whenever they get an opportunity for it. The arguments that have been advanced in favour of the amendment are mainly that the tenants should not be allowed to escape the payment of transfer-fees to their landlords by the subterfuge of creating underleases. What justification has any person or any party in this House to assume that the tenants would resort to dishonesty in order to escape the payment of transfer-fees. (A VOICE: Mr. Fazl-ul Huq said so.) Sir, it is the practice of certain speakers to attribute all sorts of bad qualities to the tenants, but if they would compare the record of the landlords with that of the tenants, I am quite sure they will be convinced that the tenants have not deserved the appellation of dishonest men. Sir, if I cannot appeal to the common sense of the landlords. I can at least draw their attention to the last paragraph of section 87 of the Act. Under that section you give another salami to the landlords as against the under-raiyats, when a tenant abandons or surrenders his tenancy. Under the provisions of section 87, he can get rid of the under-raiyat, unless the latter agrees to pay to the landlord a premium of six times the annual rent. So

that you penalise the under-raiyat twice: once when the under-raiyati is created, and again in the event of abandonment or surrender of the parent holding. If you think that the landlords are entitled to 20 per cent. salami, you can give it to them; but I cannot understand the necessity for this subterfuge to put as much money as possible into the pockets of the landlords.

Sir, we are grateful to the Deputy Leader of the Swarajya Party for his opinion that the principle underlying the Bill is the enrichment of the landlords by the impoverishment of the tenants. He argued that if this amendment is not accepted, the principle of the Bill will be frustrated. I take him at his word, and I have not the least doubt that he means what he says. If this amendment is passed, you will not simply give to the landlords a salami of 20 per cent., but practically one of 25 per cent.

Sir, we on this side of the House must raise our emphatic protest against this sort of robbery of the tenants. If you accept one principle, follow it to its logical conclusions. But I cannot understand this policy of having recourse to every possible means in order to get as much money for the zamindars out of the impoverished tenantry as possible. You are not doing any service to the country. The whole prosperity of the country depends upon the labour of these poor starving millions.

Sir, I do not wish to speak further, but I wish only to repeat my protest against this sort of spoliation.

Sir ABD-UR-RAHIM: Sir, I can quite understand a zamindar, the Maharaja of Mymensingh, moving such an amendment. All these have been sprung upon us at the last moment. It was delightful to hear Mr. J. C. Gupta, the Whip of the Swarajya Party, supporting such an amendment. The whole underlying principle of this Bill seems to be the payment of salami to the landlord at every stage. One should have thought that those hon'ble members who advocate the cause of freedom, as we conceive it in the twentieth century, would fight shy of any such mediæval and barbarous custom as salami to the landlords. (A VOICE: It is not salami it is landlord's fee.) You may call it landlord's fee, but it is nothing but salami pure and simple. Yes, that is the way you want to get rid of the opposition of the tenants. It is just your way in by a mere jugglery of words to hide your real intentions. I am very sorry indeed to find that Mr. J. C. Gupta thinks he can get rid of his responsibility by calling salami, landlord's fee. The salami is a relic of the mediæval age and an example of the landlord's tyranny. One should have thought that the Swarajya Party and the landlords would have been satisfied with whatever they have got by way of salami on sales. But, no, salami must be paid at every step. The

whole object of this Bill, as has been amply made clear, is to put as much money as possible into the pockets of the landlords by taking it from the pockets of the poor millions of cultivators. The whole principle underlying the question of salami is wrong. I would ask those who have supported it in the case of alienations by way of sale not to go any further than that. Again, what will be the result if this amendment is accepted? It will only leave the door wide open for litigation. What is more, it is sought to give to the landlords a certain percentage of the value of leaseholds which is much more than what the landlords are entitled to. A motion like this having been sprung upon the House at the last moment, I submit Government are entirely wrong in accepting it. I cannot understand what has happened in the meantime to induce the Government to change their mind after so many Committees and consultations? I submit that it is wholly without justification on the part of the Government to accept an amendment like this.

I oppose the amendment.

Mr. F. E. JAMES: Sir, I desire to say that we oppose this amendment. While we feel that the first part of the amendment is unsatisfactory, and to some extent unjustifiable, the second part is in some respects an improvement on the provisions in the Bill itself. Our difficulty is this: That Government apparently have accepted in advance, without any explanation whatsoever, a very important amendment to the Bill. I venture to suggest very strongly indeed to the Hon'ble Member in charge of the Bill that he puts every section of this House in extremely difficult position if they find that an important amendment to a very important clause in the Bill has been accepted by him without any reason being given for its acceptance and without any consultation with this group. We are entirely in the dark as to what has caused the Government to change its mind on this particular amendment, because it is an entirely different thing from the clause as it stands in the Bill. In view of that difficulty, and in view of the fact that the amendment is certainly not acceptable in its entirety to this group, we feel that we have no alternative but to use the Hon'ble Member's own words, "to stick to the Bill" (Hear, hear)—a line of action which he himself advocated earlier in the debate. Therefore, we oppose this amendment.

Mr. F. A. SACHSE: Sir, both Mr. Jogesh Chandra Gupta and Sir Abd-ur-Rahim were equally wrong in saying that the scheme of this Act would be defeated, if leases to under-raiyats for over 12 or 15 years were not treated as transfers, and if the landlords were not to get a salami on such leases. That is not the scheme of the Act at all. The original scheme of the Act was to give under-raiyats a reasonable

share of the privileges and the security which the raiyats themselves obtained in 1885. We have consolidated the rights of under-raiyats with occupancy rights by custom, and have agreed that those who have been on the land for 12 years continuously will not be ejected, except for non-payment of rent. But the zamindars were all the time afraid that, instead of selling their lands, the raiyats would sub-let their lands, and so we had to give up the original idea of Sir John Kerr's Committee of making the rights of under-raiyats good against the world. We have, therefore, stated definitely in the Act that no kind of under-raiyats, whether under-raiyats by custom or under-raiyats holding land for 12 years continuously, or even those who have been admitted in documents as occupancy raiyats by their landlords, would be treated as protected interests. Having done this, we thought—Sir John Kerr's Committee thought, the Select Committee thought, and the last Committee thought—that we had sufficiently safeguarded and protected the landlords against their apprehension that sub-leases would take the place of sales. Well then, it is a question of opinion which only the future can settle. Surely, no man who wants to invest his money in land will take a sub-lease which can at any time go by the board entirely, if the landlord arranges with the raiyat to have a collusive rent-decree. Surely, he will prefer to pay 20 per cent. salami in order to have a permanent interest. However, it is a question of opinion. If the landlords are not satisfied and if they must have this salami on transfers, then our idea is that they must give these under-raiyats "protected interests."

It has been pointed out to us that, although we have not stated so definitely in section 48H, no Court would hold that an under-raiyat who had paid a salami to his landlord under section 48H would not have a protected interest against the landlord who took that salami.

6 p.m.

If this is a correct view, then it is not necessary to say definitely that the under-raiyat will be protected. We cannot accept Babu Naliniranjan Sarker's amendment for the reason that he wants definitely to say that the under-raiyats who have paid salami will not be protected. Our other reason for opposing his amendment is that according to his proposal the salami will be based on the under-raiyat's rent. The higher the rent, the larger the salami which the landlord will receive. If the under-raiyat paid a decent rent, there is no reason why the landlord should get any salami at all. Therefore, we think Babu Naliniranjan Sarker's amendment most unjust in the case where the raiyat is paying an economic rent. That is why we prefer the Maharaja of Mymensingh's amendment, where the salami will be based on the rent of the raiyat himself for the land

sub-let. We object very strongly on principle to the basing of the salami on anything except the rent of the raiyat. If the rent is reasonable, then there should be no salami. If the landlord still thinks that he is in danger of being cheated out of his salami, we think that the acceptance of the Maharaja's amendment may not do much harm, partly because, like section 85 whose place it takes, it will be inoperative. We do not think that it would be possible for any Court to fix a salami, except on the basis of the actual rent, and it should not exceed 5 times the actual rent paid by the raiyat himself.

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, certain important questions have been put to me by Sir Abd-ur-Rahim and Mr. James. Whatever Sir Abd-ur-Rahim says must be considered and considered with the utmost respect. Sir Abd-ur-Rahim has put to me as to what has happened that the Government has changed its mind. My answer is this: That the Government has not at all changed its mind. If Sir Abd-ur-Rahim will remember, in the Sir John Kerr's Committee's report and in the Select Committee's report as well, the provision was not to delete section 85 of the Act. Here in the present Bill we have deleted section 85 of the Act and in lieu thereof we have made provisions in Chapter VII. One of these provisions, viz., 48H, introduces the principle that the landlord will get a percentage of the salami—the same percentage of the salami as he would have got in the case of sale. Therefore, the under-lying principle is the percentage of salami. Now under section 26, the percentage of salami was fixed. The House decided to give the landlord 20 per cent, or 5 times the rental, in place of 25 per cent. and 6 times the rental which was in the original clause. The provisions of section 48H propose the same thing which has already been settled under section 26. Therefore, there is no change so far as the principle is concerned.

I hope this also disposes of Mr. James's point. There is no difference in principle. There may be some difference in detail and that will help towards automatic adjustment. There is no difference between our amendment and the Maharaja's amendment, and that is why we are willing to accept it. And it is because we find a difference in principle between Babu Naliniranjan Sarker's and ours, that we are opposed to it. With these words I would say to Mr. James that if he applies my dictum of sticking to the Bill, he should also accept the Maharaja's amendment. However, I understand his difficulty. We who have been working on this Bill for a long time, we who are born in this land and move with the people—even we find it a very difficult Bill to understand. Mr. James and his friends have been trying their utmost to properly understand this Bill, but it is no fault of theirs if they have not properly grasped the significance of

this amendment and his criticisms are based on this apprehension. Let me assure him that we are sticking to the principle of the Bill, and if he could properly understand the amendment, he will find that we have not deviated from the principle.

Khan Bahadur Maulvi AZIZUL HAQUE: On a point of information, Sir. What is the meaning of "the value of leaseholds"?

The Hon'ble Sir PROVASH CHUNDER MITTER: The meaning is this: Supposing an occupancy raiyat himself pays one rupee rent to his superior landlord and supposing he lets it out to an under-raiyat, say, for Rs. 2—it may be for a period of 15 years or it may be in perpetuity—the value will depend on that difference on the difference in rental and the period of the lease.

Sir ABD-UR-RAHIM: On the explanation which has been given by the Hon'ble Member, may I ask him a question? Is there any guarantee that the Court will act upon any such explanation.

The Hon'ble Sir PROVASH CHUNDER MITTER: On a question of guarantee on behalf of the Court, I do not want to enter. If there is no guarantee, there is no grievance on the part of Sir Abd-ur-Rahim.

The motion that in clause 32, proposed section 48H shall be omitted was then put and a division taken with the following result:—

AYES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Chaudhuri, Maulvi Nurul Huq.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
Karim, Maulvi Abdul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Rahim, Sir Abd-ur-
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur-.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sattar, Mr. Abdeel Razak Hajee Abdeel.
Selaiman, Maulvi Muhammad.

NOES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Bagchi, Babu Romes Chandra.
Banerjee, Babu Prometha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Bejoy Krishna.
Bose, Mr. S. C.
Burge, Mr. S. E. J.
Casselis, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Choudhury, Maulvi Khershed Alam.
Cohen, Mr. D. J.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dawding, Mr. T. W.
Dutt, Babu Saral Kumar.
Fyfe, Mr. J. H.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Gordon, Mr. A. D.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Himatsingka, Babu Prabhu Deyal.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.

James, Mr. F. E.
Laha, Babu Sareda Kripa.
Luke, Mr. N. R.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
McCluskie, Mr. E. T.
Miller, Mr. C. C.
Mitter, the Hon'ble Sir Provash Chunder.
Moitra, Srijut Jogendra Nath.
Mukherjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Nem Chandra.
Nelson, Mr. W. H.
Pal Choudhuri, Mr. Ranjit.
Parrett, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Paikat, Mr. Prosanna Deb.
Pay, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Maharaja Jogindra Nath.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.*
Stapleton, Mr. N. E.
Thomas, Mr. N. W.
Wordsworth, Mr. W. C.

The Ayes being 17 and the Noes being 78, the amendment was lost.

The motion of Babu Naliniranjan Sarker was then put and a division taken with the following result:—

AYES.

Ali, Mr. Altaf.
Banerjee, Babu Promotha Nath.
Banerjee, Mr. A. C.
Basu, Babu Sasi Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Bose, Babu Bejoy Krishna.
Bose, Mr. S. C.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Khan Bahadur Maulvi Nafizar Rahmen.
Chaudhury, Maulvi Khorshed Alam.
Das Gupta, Dr. J. M.
Datta, Babu Akhil Chandra.
Dutt, Babu Saral Kumar.
Ganguly, Babu Khagendra Nath.
Ghose, Babu Amarendra Nath.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Nimatsingka, Babu Prabhu Dayal.
Laha, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
McCluskie, Mr. E. T.
Moitra, Srijut Jogendra Nath.
Mukherjea, Srijut Taraknath.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Nem Chandra.
Pal Chaudhuri, Mr. Ranjit.
Paikat, Mr. Prosanna Deb.
Pay, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Maharaja Jogindra Nath.
Ray, Srijut Radha Gobinda.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Roy, Mr. Kiran Sankar.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Naliniranjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Blair, Mr. J. R.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chaudhuri, Babu Pramendra Narayan.
Chaudhuri, Maulvi Nurul Huq.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Cohen, Mr. D. J.
Beck, Mr. A. J.
Dowding, Mr. T. W.
Fyfe, Mr. J. H.
Ghose, Mr. M. C.
Gupta, Rai Bahadur Mahendra Nath.
Haque, Khan Bahadur Maulvi Azizul.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Huq, Khan Bahadur Maulvi Ekramul.
James, Mr. P. E.
Karim, Maulvi Abdul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Luke, Mr. N. R.
Marr, the Hon'ble Mr. A.
Martin, Mr. O. S.
Miller, Mr. C. C.

Mitter, the Hon'ble Sir Provash Chunder.
Mumin, Khan Bahadur Muhammad Abdul.
Nelson, Mr. W. H.
Parrett, Mr. P.
Prentice, the Hon'ble Mr. W. D. R.
Rahim, Sir Abd-ur.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shamsur.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Ray Chaudhuri, Mr. K. C.
Reid, Mr. R. N.
Sachse, Mr. P. A.
Sarker, Rai Sahib Rebati Mohan
Sattar, Mr. Abdeel Razak Hajee Abdeel.
Soleiman, Maulvi Muhammad.
Stapleton, Mr. H. E.
Thomas, Mr. N. W.
Wordsworth, Mr. W. C.

The Ayes being 47 and Noes 47, there was a tie.

Mr. PRESIDENT: As there is an equality of votes, I give my casting vote on the side of Government in order to maintain the status quo.

The motion was then lost.

Srijut NAGENDRA NATH SEN: I rise on a point of order. Is Rai Mahendra Nath Gupta Bahadur entitled to vote. He was appointed a member of this Council only for one month.

Mr. PRESIDENT: His period has been extended further.

The motion of Maharaja Shashi Kanta Acharjya Chaudhuri, of Muktagacha, Mymensingh, was then put and a division taken with the following result:—

AYES.

Acharjya Chaudhuri, Maharaja Shashi Kanta.
Ali, Mr. Altaf.
Banerjee, Babu Promotha Nath.
Banerjee, Mr. A. C.
Basu, Babu Saci Sekhar.
Basu, Mr. P. C.
Biswas, Babu Surendra Nath.
Blair, Mr. J. R.
Bose, Babu Sejay Krishna.
Bose, Mr. S. C.
Burge, Mr. B. E. J.
Cassells, Mr. A.
Chakravarti, Babu Jogindra Chandra.
Chakraburtty, Babu Jatindra Nath.
Chatterjee, Srijut Bijay Kumar.
Chaudhuri, Babu Pranendra Narayan.
Chaudhuri, Khan Bahadur Maulvi Hafizar Rahman.
Chaudhuri, the Hon'ble Nawab Bahadur Saiyid Nawab Ali, Khan Bahadur.
Chaudhury, Maulvi Khorshed Alam.
Cohen, Mr. D. J.
Das Gupta, Dr. J. M.
Dash, Mr. A. J.
Datta, Babu Akhil Chandra.
Dutt, Babu Sarat Kumar.
Ghose, Babu Amarendra Nath.
Ghose, Mr. M. C.
Ghosh Maulik, Mr. Satyendra Chandra.
Ghuznavi, Alhadj Sir Abdelkerim.
Goenka, Rai Bahadur Badridas.
Guha, Mr. P. N.
Gupta, Mr. Jogesh Chandra.
Gupta, Rai Bahadur Mahendra Nath.
Himatsingka, Babu Prabhu Dayal.
Hogg, Mr. G. P.
Hosain, the Hon'ble Nawab Musharruf, Khan Bahadur.
Lala, Babu Sareda Kripa.
Maiti, Babu Mahendra Nath.
Marr, the Hon'ble Mr. A.
McCluskie, Mr. E. T.
Mitter, the Hon'ble Sir Pravash Chunder.
Maitra, Srijut Jogendra Nath.
Mukherjea, Srijut Taraknath.
Mumin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaj Kumar Sris Chandra.
Nasker, Babu Hem Chandra.
Nelson, Mr. W. H
Pal Choudhuri, Mr. Ranjit.
Prentice, the Hon'ble Mr. W. D. R.
Raikat, Mr. Prosanna Deb.
Ray, Babu Surendra Nath.
Ray, Dr. Kumud Sankar.
Ray, Srijut Radha Gobinda.
Reid, Mr. R. N.
Roy, Dr. Bidhan Chandra.
Roy, Mr. Bijoy Prasad Singh.
Ray, Mr. D. N.
Ray, Mr. Kiran Sankar.
Sachse, Mr. P. A.
Sanyal, Babu Sachindra Narayan.
Sarker, Babu Nalinikanjan.
Sen, Mr. Satish Chandra.
Sen, Srijut Nagendra Nath.
Sen Gupta, Mr. J. M.
Sinha, Raja Bahadur Bhupendra Narayan.
Stapleton, Mr. H. E.

NOES.

Afzal, Maulvi Syed Muhammad.
Ahamad, Maulvi Asimuddin.
Ahamad, Maulvi Kasiruddin.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Chaudhuri, Maulvi Nurul Huq.
Dowding, Mr. T. W.
Fyfe, Mr. J. H.
Haque, Khan Bahadur Maulvi Azizul.
Huq, Khan Bahadur Maulvi Ekramul.
James, Mr. F. E.
Karim, Maulvi Abdul.
Khan, Khan Sahib Maulvi Muazzam Ali.
Khan, Maulvi Tamizuddin.
Luke, Mr. H. R.
Martin, Mr. O. S.
Miller, Mr. C. C.
Parratt, Mr. P.
Rahim, Sir Abd-ur.
Rahman, Maulvi Azizur.
Rahman, Maulvi Shameur.
Rauf, Maulvi Syed Abdur.
Ray, Babu Nagendra Narayan.
Sarker, Rai Sahib Rebati Mohan.
Sattar, Mr. Abdeel Razak Hajee Abdeel.
Solaiman, Maulvi Muhammad.
Thomas, Mr. H. W.
Wordsworth, Mr. W. C.

The Ayes being 65 and the Noes 27, the following motion was carried:—

Provision as to salami.

48H. (*1*) No lease to an under-raiyat for a term exceeding 12 years shall be registered unless a landlord's fee equal to 20 per cent. of the value of the leasehold created or 5 times the annual rent of the lessor, whichever is greater, together with the prescribed cost of transmission, a notice giving particulars of the lease in the prescribed form and the prescribed process-fee for the service of such notice on the landlord or his common agent, if any, is paid to the Registering Officer.

[*Explanations.*—(*1*) When the lease comprises a portion or a share of the lessor's holding, the rent of that portion or share shall for the purpose of determining the landlord's fee under this sub-section bear the same proportion to the rent of the entire holding as the area or share sub-let bears to that of the entire holding.

(*2*) A lease may include either a patta executed by the lessor or a kubuliyat executed by the lessee, but where the landlord's fee has been paid for the patta it shall not be again payable for the kabuliyat and vice versa.]

(*2*) The manner of transmission of the landlord's fee to the immediate landlord shall, so far as possible, be that provided in section 26C.

(*3*) The acceptance by the landlord of the landlord's fee provided in sub-section (*1*) shall not operate as an admission of the amount of rent or the area of any incident of the raiyat's or under-raiyat's holding, or be deemed to constitute an express consent of the land-landlord to the division of the holding or to the distribution of the rent payable in respect thereof."

The motions standing in the names of Maulvi Tamizuddin Khan, Maulvi Nurul Huq Chaudhuri and Maulvi Syed Nausher Ali were not put as they were covered by the foregoing decision of the Council.

[At 6-15 p.m. the Council was adjourned and it reassembled at 6-30 p.m.]

Khan Bahadur Maulvi EKRAMUL HUQ: After the clause on pre-emption has been passed by the Council in the way it has been, I do not think I shall be justified in moving this amendment. I withdraw it.

The following motions were called but not moved.

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 23, to the proposed section 26B, the following shall be added, namely:—

"Provided that all transfers ejected by a registered instrument or otherwise before the passing of the Bengal Tenancy Amendment Act in which (A) the tenant has not been recognised by the landlord or (B) over which a suit for ejectment is pending before court of law, shall be so recognised in case (A) by the transferee satisfying the necessary provisions of this Act regarding transfer, in case (B) by his paying in addition the legal cost incurred by the landlord in conducting the suit, in case the holding was not transferable by custom."

Maulvi KADER BAKSH to move that in clause 23, after the proposed section 26D the following shall be added, namely:—

"F. In cases in which transfers or bequests have been made with respect to holdings, or portion or share thereof before the commencement of the Bengal Tenancy (Amendment) Act, 1928, the transferees or the legatees of these holdings or shares or portions thereof shall be given an opportunity to deposit the landlords' transfer fees in Court with regard to these transfers and bequests at 10 times the annual rent of the holdings or of the portions or shares transferred within six months from the passing of the Amendment Act and that the provision of this section shall be published in the local official Gazette and also translated and printed in Bengali and announced in the villages within the Presidency of Bengal by beats of drums within a month from the passing of this Act."

Babu NALINIRANJAN SARKER to move that in clause 23, after the proposed section 26J, the following new section shall be added, namely:—

"26K. All transfers of holdings or portions or shares of holdings of occupancy raiyats and the occupancy rights therein, that have already been made, shall be valid, provided that the transferees, if not already recognized by the landlord as tenants, do, within six months of the date of this Act coming into force, deposit with the Collector, the landlord's transfer fees as provided for in section 26D of this Act, together with the transmission fees. On such deposit being made, the Collector shall proceed in the manner prescribed in sub-section (3) of section 26C:

Provided that the landlord shall have the same right of purchase as is provided in section 26F, if he apply to the Court in the manner prescribed in that section within two months of the service of notice to him issued by the Collector after the aforesaid deposit:

Provided also that if the transfer fee is not deposited within six months, the landlord may apply for ejectment in the Civil Court within two years from the date of the passing of this Act."

Babu ROMES CHANDRA BACCHI to move that in clause 23, after the proposed section 26J, the following section shall be added, namely:—

"26K. (*1*) If the landlord of an occupancy holding brings an ejectment suit against the transferee thereof, such transfer taking place within five years immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, the Court before passing a decree for ejectment, shall pass an order upon the transferee, directing him to deposit in Court twenty per cent. of the value of the holding (as set forth in the instrument of transfer), or five times the annual rent, whichever is greater, as landlord's fee, together with the cost of the suit for payment to the landlord, within one month from the date of such order.

(*2*) If the transferee deposits such amount within aforesaid time, his transfer shall have the effect of being recognised by the landlord and the ejectment suit shall be dismissed.

(*3*) If the transferee fails to deposit the aforesaid amount in the manner prescribed above, the Court shall pass a decree for ejectment against him.

Explanation.—(*a*) For the purpose of this section, "transfer" means and includes:—

(*i*) sale, including Court sale,

(*ii*) gift,

(*iii*) exchange, and

(*iv*) bequest.

(*b*) For the purpose of this section, "value of the holding" means:—

(*i*) in the case of private transfer by sale, gift or exchange, the value set forth in the instrument of transfer;

(*ii*) in the case of transfer by Court sale, the amount stated in the sale certificate; and

(*iii*) in the case of bequest, the value as determined by the Court for the purpose of stamp duty for granting probate or letter of administration."

Srijut JOGINDRA NATH MOITRA to move that in clause 23, after proposed section 26J, the following new section be added, namely:—

"26K. A transferee of a holding or a portion of the holding of an occupancy raiyat whose instrument of transfer precedes the date of the passing of this Act shall be recognised by the landlord as an occupancy raiyat if the transferee deposits with the Collector, within two months of the passing of this Act, the landlord's transfer fees as set forth in section 26D, together with the prescribed cost of transmission:

Provided in case of such a transferee, section 26F shall not apply."

Maulvi ABDUL GOFRAN to move that in clause 23, after the proposed section 26J, the following section be inserted, namely:—

"26K. (*1*) When the owner of an occupancy holding creates a permanent and heritable under-rayati interest either in respect of whole or part of his holding without mention of any salami in the instrument of the lease, the immediate landlord of the occupancy holding shall have right to purchase the occupancy holding to the extent to which such under-raiyati has been created by depositing in Court within 2 months from the date of receipt of notice of transfer as provided in sub-section (*2*) for payment to the raiyat 20 times the net annual profit which would accrue to him by the creation of such under-raiyati and the provisions of section 26F shall mutatis mutandis apply to such transfer.

(*2*) The registering officer shall not register any such document creating such permanent and heritable under-raiyati interest, unless it is accompained by—

(*a*) a notice giving particulars of the transfer in the prescribed form, and

(*b*) the process fee prescribed for the service of such notice on the landlord or his common agent, if any."

Maharaja SHASHI KANTA ACHARJYA CHAUDHURI of Muktagacha, Mymensingh, to move that in clause 23 after the proposed section 26J, the following section be inserted, namely:—

"26K. Notwithstanding anything contained in this Act, the transferee of a share or part of a holding who has not taken settlement from the landlord prior to the passing of this Act, shall be liable to eviction of the remaining part or share of the holding be transferred after the Bengal Tenancy (Amendment) Act, 1928, comes into force."

Mr. F. A. SACHSE: With your permission, Sir, may I move some formal drafting amendments which are necessary to make the wordings of the amendments already made fit in with the existing sections. They have been shown to the respective members concerned and they have agreed.

Mr. PRESIDENT: In that case I am prepared to admit them on short notice.

Mr. F. E. JAMES: On a point of order, Sir. May I suggest that inasmuch as these amendments have been circulated, with your permission they may be taken as read and the numbers only called out.

Mr. PRESIDENT. If the House agrees to that, I have no objection.

The following motions were put and agreed to:—

1. In clause 2—

(*i*) at the end of proposed section (*3*) (*iii*) the word "and" shall be inserted;

(*ii*) in proposed section (*3*) (*iv*) for the words "the third part of the First Schedule of" the words "Part III of the First Schedule to" shall be substituted.

2. In clause 4 (*a*), in clause (*i*) of the proposed proviso, the word "a" after the word "such" shall be omitted, and for the words "the owner of such land" the words "his landlord" shall be substituted.

3. In clause 18, in proposed section 18C, for the words "whose respective jurisdictions" the words "the respective jurisdictions of which" shall be substituted.

4. In clause 23, in proposed section 26C (*2*), before the word "value" the word "the" shall be inserted.

5. In clause 23, in proposed section 26C (*3*), for the first proviso the following shall be substituted, namely:—

"Provided that where there is no common agent, a co-sharer landlord may draw his proportionate share of landlord's transfer-fee by an application to the Collector, accompanied by copies of extracts from the Intermediate Register maintained by the Collector under section 4 of the Land Registration Act, 1876 (Ben. Act VII of 1876), or copies of finally published record-of-rights under Chapter X of this Act, or any other document showing the share and title of the applicant."

6. In clause 23, in the proposed section 26C (*3*), in the second proviso for the words "should be entitled to deposit" the words "shall deposit" shall be substituted.

7. In clause 23, instead of the third proviso to section 26E (*3*), the following proviso shall be inserted, after proposed section 26E (*1*), namely:—

"Provided that where a co-sharer landlord is the purchaser, he shall deposit in addition to the prescribed process-fee the amount of landlord's transfer-fee proportionate to the shares of the remaining co-sharers, together with the prescribed cost of transmission thereof."

8. In clause 23, instead of the first proviso to section 26E (*3*), the following shall be inserted after proposed section 26E (*3*), namely:—

"(*2a*) If the purchaser fails to comply with the order of the Court or the Revenue Officer under sub-section (*1*) within such time as may be specified in the said order, the Court or the Revenue Officer may make an order for the forfeiture of the purchase money and for the resale of the holding or portion or share thereof. If the mortgagee fails to comply with the order under sub-section (*2*) within such time as may be specified therein, the Court may make an order for dismissal of the suit for foreclosure."

9. In clause 23, instead of the second proviso to proposed section 26E (*3*) the following shall be substituted, namely:—

"Provided that where there is no common agent, a co-sharer landlord may draw his proportionate share of landlord's

transfer-fee by an application to the Collector, accompanied by copies of extracts from the Intermediate Register maintained by the Collector under section 4 of the Land Registration Act, 1876, or copies of finally published record-of-rights under Chapter X of this Act, or any other document showing the share and title of the applicant."

10. In clause 32, in the proviso to proposed section 48, the words "amount of" shall be omitted.

11. In clause 32, in proviso (*i*) (*2*) of proposed section 48C, for the words "partly before or partly after" the words "partly before and partly after" shall be substituted.

12. In clause 77, after sub-clause (*I*), the word "and" shall be inserted.

13. **The Hon'ble Sir P. C. MITTER** to move that in clause 108 (*3*), line 3, for the word and figures "section 174" the words and figures "this section or section 174" shall be substituted.

14. In clause 114 (*a*), at the end of clause (*h*), the word "or" shall be inserted.

15. In clause 114 (*b*) (*i*) for the words bracket and letter "and (*g*)" the words brackets and letters "(*g*) and (*h*)" shall be substituted.

16. In clause 114 (*b*) for (*ii*) the following shall be substituted, namely:—

"(*ii*) clauses (*e*) and (*f*) shall be renumbered as clauses (*d*) and (*e*) respectively."

17. In clause 121 in proposed section 188, proviso (*iii*), for the words, brackets and letters "clause (*c*) or clause (*cc*)" the words, brackets and letter "or clause (*c*)" shall be substituted.

18. In clause 123 (*4*), proposed sub-clause (*p*) shall be omitted.

7 p.m.

The following motions were not put as they were covered by the foregoing decision of the Council:—

Mr. JOGESH CHANDRA GUPTA to move that in clause 22, in proposed section 23A, line 11, after the word "land" the following words shall be added, namely, "the landlord shall be entitled to realise from the tenant half the quantity or value of the timber utilised or disposed of by the tenant."

Maulvi SYED NAUSHER ALI to move that if amendment No. 6 be not carried then after the words "shall vest in the landlord" in the said proviso the following be inserted, namely:—

"up to the end of the agricultural year 1340 within which time he shall remove them and after which he shall have no right to them," and

after the word "rights" at the end of the proviso the words "up to the end of the agricultural year 1340" be added.

Babu AMULYA CHANDRA DATTA to move that in clause 22—

(*a*) for the word "landlord" in the 5th line of the proviso to proposed section 23A the word "tenant" be substituted;

(*c*) for the last two lines of the said proviso the words "subject to the payment of one-fourth of the price thereof to the landlord when the trees are cut and appropriated" be substituted.

Mr. A. K. FAZL-UL HUQ and Srijut NAGENDRA NATH SEN to move that in clause 22 the words beginning with "and the landlord" up to "such rights" in the proviso to the proposed section 23A be omitted.

Maulvi KADER BAKSH to move that in clause 22, in the proviso to the proposed section 23A, line 2 from bottom, after the words "the land" the following shall be inserted, namely:—

"after the expiry of at least one month of the due service of a proper notice upon the tenant of his intention to do so."

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 22 to proviso to the proposed section 23A the following shall be added, namely:—

"till the year 1929 after the expiry of which the landlord's right to such trees shall cease to exist."

Kazi EMDADUL HOQUE to move that in clause 22, in the proposed section 23A, the following words shall be added at the end, namely:—

"Provided that the landlord has with due notice to the tenants caused the trees in respect of which he claims the rights to be entered in a register to be kept for the purpose by the Collector of the district or the Subdivisional Officer as the case may be within one year from the passing of this Act."

Babu JOGINDRA CHANDRA CHAKRAVARTI to move that in clause 22 in the proviso to the proposed section 23A the following shall be added, namely:—

"but shall not enter into the homestead of a raiyat for such purposes without previous notice."

Maulvi KADER BAKSH to move that in clause 22, after the proviso to the proposed section 23A, the following shall be added, namely:—

"Provided also that the landlord does not thereby deteriorate the soil of the holding or render it unfit for the purposes for which the tenancy was created."

Maharaj Kumar SRIS CHANDRA NANDY to move that in clause 22, in the proposed section 23A, after the proviso the following further proviso shall be added, namely:—

"Provided also that the landlord reserving the right to trees in the lease shall be entitled to half the price of the timber of valuable trees when felled although the trees might have been planted by the tenant."

Raja BHUPENDRA NARAYAN SINHA Bahadur of Nashipur to move that in clause 22 to the proposed section 23A the following be added as an additional proviso, namely:—

"Provided if the tenant plants any tree, he shall be liable to pay rent at an enhanced rate prevalent for garden."

Babu BEJOY KRISHNA BOSE to move that in clause 22 the following proviso be added, namely:—

"Provided that the tenant shall not cut down trees in such a manner as to materially impair the value of the holding."

Raja BHUPENDRA NARAYAN SINHA Bahadur of Nashipur to move that in clause 22, after the proviso to the proposed section 23A, the following shall be added, namely:—

"Without damaging the crops, etc., of the tenants on the land or interfering with the cultivation."

Khan Bahadur Maulvi EKRAMUL HUQ to move that in clause 23, in the proposed section 26C (2) (*c*), line 3, after the word, figures and letter "sec. 26D" the words "which in no case should be less than Re. 1 and more than Rs. 5" shall be inserted.

Mr. A. K. FAZL-UL HUQ to move that in clause 23, in the second proviso to the proposed section 26D (*e*), line 3, after the words "transfer by" the following words "Waqf or for any pious or charitable purposes or" be inserted.

Maulvi SYED NAUSHER ALI to move that in clause 23, in the second proviso to the proposed section 26D (*e*)—

(*i*) in line 3, the word "or" be omitted.

(*ii*) in line 3, after the word "gift" the words "hiba or hiba-bil-ewar" be inserted.

Babu MAHENDRA NATH MAITI to move that in clause 23, after the proposed section 26D (*e*), the following proviso be added, namely:—

"Provided that if a transferee of a portion of a holding wants recognition of the portion transferred as a separate holding, he shall pay (if the landlord consents to spliting up of the holding) five per cent. of his purchase-money as a salami to his landlord."

If motions Nos. 611-627 be carried, **Babu NAGENDRA NARAYAN RAY** to move that in clause 23, sections 26G, 26H, 26I and 26J shall be renumbered as 26F, 26G, 26H and 26I.

Mr. A. K. FAZL-UL HUQ to move that in clause 23, at the end of sub-section (*2*) of proposed section 26I, the following be added, viz.—

"(*v*) Waqf or other dedication for pious or charitable purposes."

Khan Bahadur Maulvi EKRAMUL HUQ to move that for clause 29, the following shall be substituted, namely:—

"29. In section 40A of the said Act—

(*a*) in sub-section (*1*) for the words 'fifteen years' where they first occur the words 'thirty years' shall be substituted, and

(*b*) in sub-section (*2*) for the words 'fifteen year' the words 'thirty years' shall be substituted."

Maulvi ASIMUDDIN AHAMAD to move that in clause 32 in the proposed section 48C (*d*)—

(*b*) for clause (*i*) (*2*) of the proviso, the following shall be substituted:—

"(*2*) been in possession of his land for a continuous period of twelve years and a homestead thereon for a continuous period of seven years whether before or after or partly before or partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928."

Maulvi NURUL HUQ CHAUDHURI to move that in clause 32, in proviso (*i*) (*2*), lines 3 and 4, to the proposed section 48C the words "and a homestead thereon" shall be omitted.

Khan Bahadur Maulvi AZIZUL HAQUE to move that to clause 129 the following shall be added after the "substituted" in line 6, namely, "and the word 'prescribed' before the words 'the cost of transmission' be omitted wherever it occurs in the Bill."

The Hon'ble Sir PROVASH CHUNDER MITTER: Sir, I beg to move that the Bill, as settled in Council, be passed. I do not wish to make any speech at this stage as we have already had enough of speeches.

The motion was then put and agreed to.

Adjournment.

The Council was then adjourned sine die.

B. G. Press—10-10-1928—1610M—1,200—C. G. and others.

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Acharjya Chaudhuri, Maharaja Shashi Kanta, of Muktagacha, Mymensingh

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Proposed section 26J (*3*), landlord's transfer fee with compensation in certain cases of transfer, substitution of "one month" or "two weeks" for "two months" in line 5 of, 750.

Clause 32, proposed section 48, liability of under-raiyat to pay rent, addition of a proviso after, 346.

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Bill, Bengal Tenancy (Amendment)—, 1928:

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Clause 8, section 12 (2), landlord's fees, insertion of certain words in, 136.

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Clause 14 (*2*), amending section 18 of the Act, incidents of holding at fixed rates, insertion of a new clause after clause (*c*) of, 788.

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Bill, Bengal Tenancy (Amendment)—, 1928:

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Proposed new section 26F (*2*) and (*5*), power of immediate landlord to purchase, omission of certain words from lines 2 and 3 and also from line 5 of, 705, 706.

Proposed new section 26F (*3*), power of immediate landlord to purchase, insertion of certain words after the word "property" in line 7 of, 716.

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Bill, Bengal Tenancy (Amendment)—, 1928:

Clause 23—*concld.*

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Bill, Bengal Tenancy (Amendment)—, 1928:

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Clause 111, substitution for section 147 of the Act, proposed section 174 (*3*), lines 5 and 6, applications to set aside sale, insertion of certain words in, 945.

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Bill, Bengal Tenancy (Amendment)—, 1928: Clause 18, substitution for section 18C of the Act, proposed section 18C, forfeiture of unclaimed landlord's fees, addition of certain words after, 185.

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Clause 99 (b), amending section 158A of the Act, recovery of arrears of rent under certificate procedure, substitution for, 921.

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Bill, Bengal Tenancy (Amendment)—, 1928: Clause 23, proposed new section 26D, landlord's transfer fee, substitution of certain figures for "twenty-five per cent." in, 500, 501.

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Bill, Bengal Tenancy (Amendment)—, 1928:

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Bill, Bengal Tenancy (Amendment)—, 1928:

Clause 23, proposed new section 26B, holdings of occupancy-raiyats with occupancy rights transferable, addition of a proviso after, 446.

Proposed new section 26B, holding of occupancy-raiyats with occupancy rights transferable, insertion of "between *bonâ fide* agriculturists only" after "transferred" in line 6 of, 443.

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Proposed new section 26F (*2*), power of immediate landlord to purchase, substitution of certain words for the words "ten per cent." in lines 7 and 8 of, 713.

Proposed new section 26J, landlord's transfer fee with compensation in certain cases of transfer, insertion of a new section after, 750, 751.

Clause 32, substitution for section 48 of the Act, proposed new section 48, liability of under-raiyat to pay rent, addition of a proviso to, 344.

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Bill, Bengal Tenancy (Amendment)—, 1928:

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Clause 99 (b), amending section 158A of the Act, recovery of arrears of rent under certificate procedure, substitution for, 925, 927.

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Clause 20, substitution for section 22 of the Act, proposed new section 22, effect of acquisition of occupancy right by landlord, addition of sub-section (4) to, 790.

Clause 23, proposed new section 261 (4), interpretation and savings, substitution of the word "tenancy" for certain words in, 748.

Clause 32, substitution for secton 48 of the Act, proposed new section 48, liability of under-raiyat to pay rent, addition of a proviso to, 343

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Bill, Bengal Tenancy (Amendment)—, 1928:

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Proposed new section 26J, landlord's transfer fee with compensation in certain cases of transfer, insertion of a new section after, 756.

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Proposed new section 48G (4), occupancy rights of under-raiyat, substitution of "48A to 48E" for "48C, 48D and 48E" in lines 1 and 2 of, 404.

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Clause 95, substitution for section 148A of the Act, proposed new section 148A (*8*) (*c*), suits for arrears of rent by co-sharer landlords, insertion of certain words in line 2 of, 917, 918.

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